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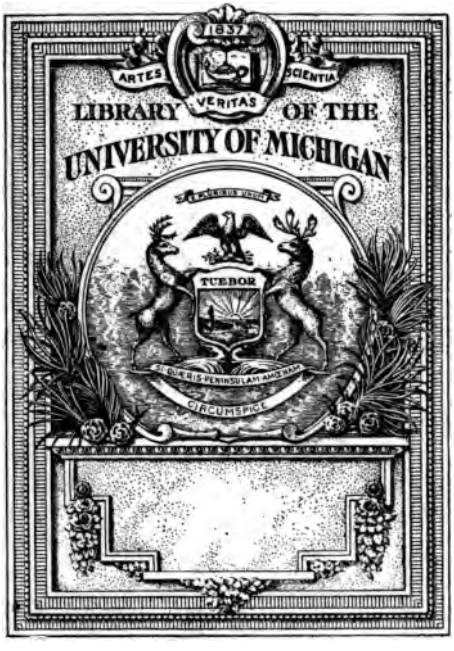
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BUDGET MAKING IN A DEMOCRACY

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BUDGET MAKING IN A DEMOCRACY

A NEW VIEW OF THE BUDGET

BY

EDWARD A. FITZPATRICK, PH.D.

Draft Administrator of Wisconsin.

Director of the Society for the Promotion of Training for Public Service

New York

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TO
CHARLES McCARTHY

331907

PREFACE

"Budgets are not merely affairs of arithmetic, but in a thousand ways go to the root of prosperity of individuals, the relation of classes and the strength of kingdoms."— GLADSTONE.

That admirably expresses the point of view of this book — a point of view that must be controlling in any discussion of budget-making in a democracy.

The budget in practically all current discussions is treated as an incidental or minor thing. It is regarded primarily as a matter of finance or of accounting procedure. It is viewed too often merely as a question of the manipulation of figures. While as a matter of fact instead of being a secondary thing it is of the first importance; instead of being a subordinate thing it is a fundamental thing; instead of being merely the manipulation of figures it is decisive in its relation to the health, education and welfare of all the citizens and residents of the state or nation concerned. That it is of the very essence of government seems to have escaped those responsible for the contemporary budget discussions. Even when they formally in so many words acknowledge the tremendous social significance of the budget, their whole discussion of it belies their formal statement of its importance. They seem not

to be able to realize fully the truth of Congressman Sherley's remark that "in the final analysis nearly every proposition that comes before a deliberative body is one either of taxation or expenditure."

When you have decided upon your budget procedure you have decided on the form of government you will have as a *matter of fact.* Make the executive the dominating and controlling factor in budget-making and you have, irrespective of what label you put on it, an autocratic actual government. If, recognizing the large part the executive or the administration may play in budget-making, you give the dominating and controlling influence to the representatives of the people elected to the legislature, you have, irrespective of what label you put on it, a democratic or a representative actual government.

It is maintained, and properly, that giving the legislature the controlling influence in budget-making is not conducive to smooth sailing, to harmony, to efficiency, to perfection. Those who make these objections should ponder well Wendell Phillips's words used in another connection: "At the same time you secure not perfect institutions, not necessarily good ones, but the best institutions possible while human nature is the basis and the only material to build with." In any conflict between liberty and what seems to be efficiency, efficiency must be sacrificed. In the long run, however, there can be no such conflict because liberty is the only sure basis of public welfare, or, if one chooses, efficiency.

Germany is financed by means of "executive budgets." There the executive budget is an integral part

of the governmental scheme. There it is the innermost center of that "divine" idea of the state which has resulted in the present world calamity. Without the executive budget the dominant Prussian military caste could never have permeated the German people with its immoral ideas and made Germany synonymous with organized terror and frightfulness. Without control of the funds it could never have utilized the educational system of Germany for implanting and propagating a philosophy in support of its ends. With a Reichstag that was more than a national debating society, more than a feeble protestant, with a Reichstag with real control over the purse strings, Germany could never have attained her present position as an outlaw among civilized nations.

A democracy can never permit at its very vitals a budget plan such as the German budget susceptible of such manipulation by a single individual or by a single group of individuals even if it were immediately a most efficient and beneficent agency. In the long run it could only spell exploitation, ruin and disaster. It would result in political atrophy of the citizenship. It could never be a government "of the people, by the people and for the people." It would be a vicarious government.

The striking situation which the world war presents made the foregoing comments advisable by way of preface. Perhaps an additional word on another phase of the subject may also be permitted by way of preface.

While the question of taxation is one of tremendous importance in this country at this time, the immediate

phase of the budget problem which requires consideration is the expenditure side. While this book keeps in mind always the revenue side of the budget and points out its importance at various points throughout the book, it devotes its main attention to the expenditure side of the budget. This is the immediate political need of the nation — a need that this book aims to satisfy in accordance with fundamental democracy. And this is in accord with the vague discussion throughout the country and the vague longing of the citizenship for an improved procedure without fully understanding what it wants.

It is easily possible to have slipped off or missed the road in the uncharted field of the state and national budget. The gentle reader and the not too gentle reviewer will confer a very great favor upon the author by letting him know of anything that would help in making a second edition of this book better — if there is to be a second edition.

For help, for inspiration, for intellectual companionship in this field of study, the author can acknowledge his indebtedness to Charles McCarthy of the Wisconsin Legislative Reference Library, but can never express adequately his appreciation of the many things he has done for him.

EDWARD A. FITZPATRICK.

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BUDGET MAKING IN A DEMOCRACY

BUDGET MAKING IN A DEMOCRACY

CHAPTER I

THE BUDGET AND ECONOMY

NATIONAL bankruptcy, state bankruptcy and municipal bankruptcy are declared to be the inevitable end toward which we are drifting in our appropriations of public money.[1] The method by which this result will come has been aptly called "government by deficit," that is, we spend money for governmental purposes far in excess of our *willingness* to impose taxes — and bonds are the convenient cloak for doing this. More particularly it is pointed out that our methods of financing government in this country are slip-shod, careless, devoid of system or plan; that they are conducive to graft, and leaks. It was said in the United States Senate that the United States government could be run at a saving of three hundred million dollars a year — not less efficiently but more efficiently — and the jaded sense of a "billion dollar country" accepted the statement without very much of a ripple of public opinion and it is often repeated quite unemotionally.

[1] The discussion throughout this book applies to the normal conditions of peace times.

And it is on the basis of such existing conditions that the budget propaganda is carried on — and very properly so.

The third session of the sixty-third Congress, for example, made appropriations for $1,115,000,000 and various odd dollars. This did not include contracts involving additional appropriations to the sum of $37,400,000. The authorized expenditures for the City of New York for 1916 were over $200,000,000. Vast sums are being spent and will be spent by governmental units everywhere. The explanation, at least in part, of this increased expenditure is that the activities of government are being rapidly extended in response to public need and popular demand. But even recognizing that, everybody knows that there is considerable waste due to dishonesty and graft, and very much more is due to the inefficiency of an untrained, inexpert public service, and to chaotic financial methods.

On the basis of these admitted facts of the increasing cost of government through graft, leaks, inefficiency, slip-shod financial methods, and legislative "pork," an extensive budget propaganda has been carried on in this country. The statement of the Chairman of the Appropriations Committee, Hon. John J. Fitzgerald, at the close of the third session of the sixty-third Congress, is generally accepted to be true for all our governmental units: "Mr. Speaker, the finances of the Federal Government must be readjusted. No more important problem will confront the Congress when it re-assembles." He continues: "The paramount consideration should be to establish our finances upon a permanently sound basis. Make-

shift legislation will not be helpful. Temporary expedients will only add to the difficulties and complicate the problems that must be faced. With the organization of the Federal Reserve System many uncertainties of our financial system have been removed, and the Treasury has been relieved of certain recurring embarrassments. Revenues and expenditures should now be carefully calculated, a definite fiscal policy established, and ample provision made for present and future necessities." (Congressional Record, Sixty-third Congress, Third Session, March 15, 1915, p. 6359.)

JUGGLING STATISTICS TO SECURE ECONOMY — AND THE BUDGET SYSTEM

Impressive comparisons are piled up to show the true inwardness of our condition and the consequent need for reform. We are told:

"Our population has been multiplied by twenty-four since 1790 — our appropriations for the current year are three hundred and sixty-six times as great as in 1790."

"We spend more in one day now than we did in one year then."

"In the more than half a century between the founding of our Government in 1789 and the outbreak of the Mexican War in 1846 the total expenses of our Government amounted to only a billion dollars. The appropriations for the present fiscal year alone amount to ninety-eight million dollars more than that — more for this one year than for those fifty-seven years! And yet during that period, in addition to the current expenses of the Government we purchased Louisiana and Florida; explored the vast Northwest Territory; fought the War of 1812, numerous Indian wars and the War with the Barbary States."

"During the decade from 1791 to 1800 we expended $68,-

350,000 — an average of $6,835,000 a year. Our pension appropriations alone for the current year are $180,300,000, very nearly three times as much as we spent for all purposes in the ten years when the seat of government was located at Philadelphia."— (Theodore Burton, "Our National Extravagance," *Saturday Evening Post,* Jan. 3, 1914.)

And so on without end.

These comparisons are varied or given a slightly different twist. For example, the Committee on State Finances, Revenue and Expenditures of the 1915 Constitutional Convention of New York State introduced its budget report with similar statistics:

"In thirty years our expenditures have increased nearly 600 per cent. while our population has increased only 82 per cent. and our property liable to taxation 274."

It continues: "This rapidly increasing per capita cost of government is a phenomenon which is not peculiar to New York State but is occurring likewise in other state governments, and also in the Federal government, although to a less extent than in New York. The cost of the Federal government in thirty years prior to 1908 has increased nearly 400 per cent., while the increase in the population was less than 84 per cent." ("Budget Systems," p. 427.)

What avails these statistics? Does the fact of difference mean anything? Or does it require further explanation? The practical result of quoting such figures even when accompanied by explanations that these figures are meaningless in themselves is to produce the impression of extravagance, of calling a halt on expenditure, of "something rotten in Denmark"—

and, therefore, the need for economy and financial reform.

Explaining its figures, the Committee says:

"To sum up, we find that throughout the country the amount of money spent on government, both state and national, is increasing much more rapidly than the population and much more rapidly than the sources of supply, in the shape of property subject to taxation.

"Undoubtedly this increase of cost is largely due to the fact that government has greatly extended its activities. *There is no reason to suppose, however, that any real or permanent check can be put upon this increase. It arises out of the constantly increasing complexity of modern life and modern business and the increasing density of our population.*[1] So long as these factors continue, greater and greater demands will be made upon the activities of government. They represent an economic pressure which is constantly growing.

"Out of these facts arises the corresponding and increasing need for sound financial methods in conducting the business of government."—(Budget Systems, pp. 428–429.)

Thus does the Committee recognize that its statistical data require explanation and need a great deal of additional information about "the increasing complexity of modern life and modern business and the increasing density of our population" before it can serve its purpose in an argument for the budget.

And so Senator Burton who used the first comparisons quoted says that one of the two general causes for the growth of national expenditures "arises from the necessary enlargement of existing public functions, due to the growth of population, to the expansion of

[1] Italics ours.

territory, and to the higher range of salaries, which are correlative with the diminishing purchasing power of money and contemporaneous with improved standards of living." (Our National Extravagance, *Saturday Evening Post*, Jan. 3, 1914.) He points out, too, that the important thing about our expenditures for navy yards is not the absolute amount expended, but that we are now "maintaining naval bases and navy yards which are practically useless under present-day conditions. They are the heritage of our Revolutionary and early national history — political considerations and public sentiment have compelled their maintenance when every practical consideration demanded their abandonment." (Ibid.) And so with the expenditures for pensions the significant thing is not the absolute amount but that "forty-eight years after the termination of the Civil War, the sum for pensions should be the largest ever appropriated." And the final explanation for this expenditure is thus stated: "After all, this evil must be traced to the ideals of the people. The greatest extravagance in our public expenditures arises from this insistent demand from localities for financial recognition of their existence." (Ibid.)

And so we find the explanations and the significance of the amounts of public expenditure in the ideals of the people and in fundamental social facts. The important thing, let it be repeated, is not how much money government is spending, but what government is spending it for, what is the social need and the social demand for the service, and what return is society getting for its coöperative expenditure.

ECONOMY THE FUNDAMENTAL PURPOSE OF THE BUDGET

But despite these facts and these explanations, statistics similar to those quoted above are used by cheap politicians and by the press as the basis of public information. Similar statistics are given out by whom? We are advised: "See how much more the government is spending this year than last. It is altogether out of proportion to our increase of population or our assessed valuation. We must reduce. Economy is the paramount political issue." And whole batteries of political buncombe are unloosed in the name of economy.

A famous saying may be truly paraphrased: "O, Economy, what crimes are committed in thy name!"

Politicians seeking office without any particular reason for their aspiration fall back on this convenient issue of economy. They get in office sometimes and always forget their campaign mistress. It served admirably as a catchword, and in that it served its purpose. The situation is exactly reflected in a fact about the English Parliament summarized thus: "If you want to raise a certain cheer in the House of Commons, make a general panegyric on economy. If you want to invite a sure defeat, propose a particular saving." (Bagehot, English Constitution.) But if, however, the legislator remembers his economy pledges he keeps them at the expense of the districts of the other fellows — of the minority. Representative Fitzgerald thus puts the case bluntly: "It may seem somewhat strange, but I hope it is not out of place, to

remind Members on this side of the House that the Democratic platform pledged us in favor of economy and to the abolishment of useless offices; but it did not declare, Mr. Chairman, *that the party favored economy at the expense of Republicans and the abolition of useless offices in territory represented in this House by Republicans while favoring a different doctrine wherever a Democratic Representative would be affected.*" (Congressional Record, April 10, 1914, p. 7034.)

The messages of governors to the state legislatures offer many examples of the conception that economy is the main purpose of the budget. And by economy is meant not conservation, not frugal management, not value received in service for value given in public funds, but less money spent and less taxes raised.

In this connection it may be well to note that false view of economy finds expression usually in the *first* message of a governor. After the chastening experience of the responsibility of administering state affairs for even a single term, the *a priori* absurdities about economy contained in the first messages of governors are usually not repeated in the second.

In these messages, but more so in political campaigns preceding the election, the unrelated fact of increased cost is made the basis of the retrenchment program. Wherever an explanation is attempted, and it is not often, it is found most frequently among the following causes: poor business organization; too many bureaus, commissions or boards; generous legislative appropriations (which is a mere restatement of the fact of in-

crease, not an explanation) and the paternalistic tendency of modern government. The real reason is the last. Government is doing many things that the Fathers never intended it should do, and so the call for a return to constitutional government. Paternalism, not economy, constitutional government, not economy? An expansion of government, not economy? These are the issues — but issues that are hidden behind clap-trap about economy, reduced taxes and retrenchment.

On the other hand, too, let it be added, the cry for economy is at times a purely demagogic appeal, a political trick, a convenient instrument of securing an election from a public whose memory does not extend over to the next election. Both radicals and conservatives, both Democrats and Republicans have used the economy issue in this way.

A governor of Wisconsin, in a message to the legislature, had this fine passage correcting the usual and false view of economy:

"This demand for economy, as I interpret it, does not mean that we should oppose those things that make for human progress; on the contrary, successful government, like all other successful institutions, must move forward and increase its usefulness to man. The people of Wisconsin want a government that is humane in its tendencies, truly progressive and responsive to the demands of a more complex civilization. In meeting these demands, however, we should not allow our zeal to lead us into costly fads, nor should we forget that a waste of the people's substance is not helpful to the cause of human progress." (Communication of Governor E. L. Philipp to the Legislature of the state of Wisconsin, 1915.)

And the remedy almost invariably proposed for the policy of retrenchment of public expenditures is the budget system.

The undoubted fact of enormous governmental expenditures and the additional facts of a little dishonesty and much inefficiency of public officials, together with the other fact that we are passing under existing revenue measures from a period of surplus to a period of deficit financing — all these call for improved financial methods looking particularly to a periodic account of stewardship for public funds and to the periodic planning of public expenditures. The improved financial methods usually recommended are generally referred to as a budget procedure. Senator Burton, who used the comparisons first quoted above, directs his paper to this conclusion: "One of the reforms most strongly urged in recent years by the advocates of national economy has been the inauguration of the budget system in the United States."

CONVENTIONAL USES OF THE WORD "BUDGET" [1]

Perhaps it is well after these preliminaries to understand clearly the terms we are using and to define them specifically for the purposes of this book.

I have occasionally heard earnest students who have read over a considerable part of the budget literature say in effect: "What is a budget? I have been

[1] "The budget system is a reform of a peculiar nature. It does not presume to introduce radical principles into our government; it does not in fact presume to introduce anything except system — an orderly and intelligible method of doing the same things that are now being done in a slip-shod and systemless manner."— William T. Donaldson, "The Budget," January, 1916, p. 6.

reading statements on the budget procedure in New York City and its comparative perfection and then I pick up a pamphlet by a leader of the budget propaganda in which he says that New York in a strict sense does not have a budget. And so I find confusion throughout. To some the budget is the document submitted by the executive officer or board; to others it is the appropriation act as it comes from the legislative body; to still others it is both. Some include the money to be raised and others omit this. Surely there must be some way out of this tangled skein."

And there is — even from the standpoint of the conventional discussion — and it is very simple. As ordinarily used the "budget" is an executive document containing certain information for the use of the legislature. It is the *information* regarding the past activities of the governmental departments together with their costs systematically arranged, together with the estimated needs for the governmental work for the next fiscal period. Accompanying this primary *document of information* is also a similar presentation of facts and estimates regarding the revenue and borrowing program of the government for recent fiscal periods and for the one immediately ahead. *The budget*[1] *is merely the administrative experience of the last or current fiscal period systematized and organized for presentation to the legislature, together with recommendations as to expenditures and revenue for the forthcoming fiscal period.*[2] It is without effect until

[1] Hereafter, as explained in the next section, the phrase "budget proposals" will be substituted uniformly for the word "budget" as here defined.

[2] The comparative tables of facts for preceding fiscal periods

the legislature has acted on it, and if it sees fit, the legislature may reject the recommendations entirely.

The budget as the orderly presentation of information regarding the activities of government for certain periods together with their costs, must be carefully distinguished from the appropriation bills which executive officers usually submit. The appropriation bills contain the budget information in form for legislative action.

But the distinction between the budget proper and the appropriation act has centered interest in the executive part of budget-making to the almost total neglect of the legislative phase. *On our journey home we have permanently put up at an inn. We need the words of admonition: Not TO this, but THROUGH this.* We have in short become so absorbed in the means that we have forgotten the ends they were to accomplish. Even from the standpoint of the conventional budget discussion the executive work in preparing the budget is only to serve as a basis for the legislative action. *But back of all this is a socio-economic-political program.* That is the real end.

A DEFINITION OF TERMS

So much for the ordinary interpretations of the budget. A rather more exact definition of the various phases of the budget process will be necessary. The first obstacle in the way of such a definition is the variety of ways the word "budget" itself is used. It means every thing and every phase of the budgetary process. Each phase of budget-making ought to be

are incidental only, though helpful, and are not essential to a budget.

definitely labeled, and so labeled that when we see the label we know unmistakably what is meant. In this book, therefore, the word "budget" by itself will be used only rarely, if at all, and when used will be understood to have reference to the general subject. What is ordinarily called by just the word "budget," will be called the "budget proposals." Budget proposals are therefore the social projects to be financed and the methods of financing them as submitted by the administrative authority to the legislature. The first step in the formulation of these budget proposals is the preparation of estimates in the various bureaus and other organization units of the departments or commissions. These are revised by the department chiefs and transmitted to the executive. These preliminary estimates will be called the departmental estimates, and when these are revised by the executive and transmitted to the legislature they are the *budget proposals*. The *budget bill or bills* will be understood in these pages to be the bills introduced into the legislature to carry into effect the budget proposals. Bills embodying proposals originated in the legislature for appropriations will not be designated other than by the general designation of appropriation bills. The budget *act or acts* will be understood to be any or all bills passed by the legislature making appropriations of money whether proposed by administrative authorities or in the legislature itself. The terms used in this paragraph will be used throughout the book in the sense in which they are here defined.[1]

[1] The terms "executive and legislative budget" will be defined in a later chapter.

THE BUDGET — A BALANCING OF EXPENDITURE AND REVENUE

The Chamber of Commerce of the United States has been actively interested in the budget propaganda. The first subject upon which a referendum was submitted to its nation-wide constituency was the national budget. Its membership voted almost unanimously for it. Thus was a very influential part of public opinion committed to the idea. In determining national legislation on this subject, this body of public opinion is likely to be decisive. It is important, therefore, that its specific position be analyzed. This analysis is pertinent to the general subject matter of this chapter.

The official journal of the National Chamber of Commerce says, in the November, 1915, issue: "Budgetary procedure,— a business-like comparison of the revenues that may be expected and the proposals for expenditures,— has been advocated by the National Chamber for several years. Such a reform will not only promote economy in the use of public funds but it will so simplify the statement of appropriations as to lead to real public understanding of the functions of the federal government."

More fully it stated its ideas in its issue of October, 1917, in these words:

"The word budget, to begin at the beginning, comes from the French *bougette*, a little bag. While the word budget was introduced from the French, the constitutional principle to which it applies is English. In the British Parliament the word has been applied to the great leather bag which

for many years contained the documents presented to the Commons to explain the resources and wants of the country. It is, in brief, an account of the finances of a state, or, by analogy, of some smaller body presented at a definite time by the responsible minister of the National legislature."

After quoting the statement that "budgets are not merely affairs of arithmetic but in a thousand ways go to the root of the prosperity of individuals, relation of classes and strength of kingdoms," the budget is defined in these words:

"The idea of a national budget is simplicity itself. Shorn of its technical economic terms, it means that the *monarch, premier,* or *president,* and his cabinet shall answer to themselves and to the country three simple questions regarding the business of the nation:

"1 — How much money will be needed for the conduct of the government during the next fiscal year?

"2 — What money is on hand? From what source is more expected?

"3 — What shall be the amount appropriated to each function of government?

"There is nothing mysterious about a budget. It can be stated just as simply as in the preceding phrases and, when thus stated, any business man, no matter how small his affairs; every farmer who plans ahead; every man in any way charged with the care of funds for others will at once perceive that a national budget must be desired and sought by all citizens who wish to have business-like methods applied to the one big business of the nation — its government. Furthermore, they will perceive that, if a little business needs system, a big business involving upwards of $2,000,000,000 expenditures a year, needs it still more.

"In practically every country of the world except our own the national appropriations and expenditures are considered at one time by a method closely approximating, at least, that of a budget.

"All government expenditures must ultimately be met by revenue. All nations with responsible ministeries provide revenue to meet expenditures of their respective governments by means of budgets. The finance minister usually prepares estimates in summary and in detail of the needed expenditure. These at the proper time he submits to the legislative body together with estimates, also in summary and detail, of revenue. A balance is then struck by the remission of old or the imposition of new taxes according as there is a surplus or a deficit in the figures of the preceding year. This balance of revenue against expenditure, the central feature of any budget, is the primary necessity in all national finances." (Ibid.)

According to this statement the essential thing in the budgetary process is to secure a balance between expenditure and revenue — the important thing in budget-making is financial — and the important concrete thing is to provide against the excess of expenditure over revenue. Is there a narrower way of viewing the problem? Is budget-making more than financial juggling, anything else than a manipulation of figures, aiming to secure a balance of at least one cent in the public treasury at the end of the year? It is this view that serves as a basis for the economy delusion.

Let us waive this discussion for the present and let us ask a question of our author — to raise the issue sharply — and the question will be a hypothetical one. Suppose that the "monarch, premier or president" could answer satisfactorily the three questions proposed as to the amount of money needed during the next fiscal year, the amount of revenue and the amount that shall be appropriated to each function (department) of

government and thereby dissipate the mystery of the budget, how is the economy effected? Surely in a government where the taxing power is vested in the legislature, the possession of any amount of knowledge by an executive is without effect until it is translated into law by legislative and executive action. The budget is not solely nor finally an executive problem.

Practically all of the discussion of the budget assumes that the real budget problem is the one of financial administration. The economy-is-the-fundamental-issue group of reformers, taxpayers and politicians have concentrated their attention on financial administration. "Property is overburdened!" is the eternal refrain of their song. Unfortunately this agitation is largely selfish, or insincere, or both. Some of its practical proposals will be analyzed in the course of the next few pages.

THE ECONOMY PLEA AS A CLOAK

The conservative wing of the Republican party had elected a governor in one of our states on the plea of economy and of the necessity for dismissing the tax-eating officeholders. Many of the conservatives felt that the legislative reference library was somehow the agency through which the germs of forward-looking legislation crept into the legislature. It would be surprising if the experience of the whole world collected, classified and digested would not be fruitful of suggestion to honest and intelligent men. The governor heard the siren call and wrote in his message:

"The legislature of 1903 created a legislative reference

library. Its purpose was to furnish information to members of the legislature upon such subjects as related to legislation. It has since been converted into a bill drafting institution where proposed laws are furnished upon application without any further effort upon the part of the legislator. This system has had the effect of greatly increasing the number of bills introduced and has resulted in the passage of a great many useless laws. The legislature of 1913 passed 778 bills.

"The purpose of the original act creating the library was good. However, we must now judge its value by the record it has made, which I believe to justify the statement that it has exercised an undue influence upon legislation. It has resulted in outside preparation of bills for legislative action, superseding individual legislative study, and greatly impairing legislative efficiency, to act as the result of that individual judgment which members of such a body should devote to the work they were elected to perform. Originally projected as a library, it has in every sense become a bureau. I therefore recommend that the law creating the bureau, as it is now known, be repealed. This will have the effect of saving about $21,000 per year.

"The books and documents that have been accumulated in the reference library should be turned over to the State Law Library and made available to members of the legislature who may wish to use the same." (Communication of Governor Emanuel L. Philipp to the Legislature of Wisconsin, 1915, pp. 7–8.)

Save $21,000! Here again the economy issue hides the real issue. The head of the institution during the legislative hearings bluntly told the legislature that he knew the real aim of the proposed legislation was to "get him," and he suggested that he would not "burn the barn to kill the rat." He would kill the rat, and he told them how. At any rate, a legislature that was strongly pro-administration after having had contact

with and service from the reference library rejected in no uncertain terms the only specific economy measure of the administration. They expressed themselves unmistakably: *they wanted a service — not an economy.* To the credit of the governor it must be said that he subsequently changed his mind on this subject. In this instance the ordinary course of the economy plea did not result, because the legislature had daily experience with the service of the department. Where no such basis exists, the economy plea wins the day, and a necessary service is curtailed or abolished. Do not misunderstand this comment. The reference here is to the plea of economy as such, and not to the straight statement of increased or reduced demand for service by a department as a basis for either increased or decreased appropriations, nor to the increased efficiency through improved methods which lessens cost.

STANDING IN AWE OF TOTALS

The economy statesmen stand in awe of large sums of expenditures. They stand aghast at a billion dollar national appropriation, a ten million dollar state appropriation, a two hundred million dollar city appropriation, or a thousand dollar appropriation in a town of a few hundred. This astonishment seizes these statesmen in the presence of these sums whenever they are "on the outside looking in." The story goes: "Whatever may be a proper and reasonable outlay for the government in Republican times might be extravagance in pinching Democratic times." Interchange the words as you choose. The author of the foregoing remark, Congressman Gillett, quotes Presi-

dent Wilson's message to the last session of the Sixty-Third Congress:

"I assert with the greatest confidence that the people of the United States are not jealous of the amount their Government costs if they are sure that they get what they need and desire for the outlay," and then continues, "This new doctrine of Democratic economy seems to have been impressed well upon the advisers and subordinates of the President, for in the annual report of the Secretary of Commerce I find the precept reiterated:

"'No sane business man would ever judge of economy or extravagance in expenditure merely by the total. He would ask, 'Was the expenditure needed?' 'Was the money well spent?' And he would not regard with tolerance or consider economical the mere absence of expenditure,[1] especially when it involved him either in larger future outlay or in greater cost of production.'"

Congressman Gillett comments, "No matter what we spend, so long as we get what we need and desire! An entirely new doctrine in public expenditures and one seized upon by the party in control of the taxing and spending power of our Government to bring it to the verge of, if not actually thrust it into, bankruptcy by the appropriations made at this session." (Rep. Frederick H. Gillett in Cong. Record, March 15, 1915, p. 6366.)

Yet this member of Congress says in the same discussion: "I recognize that the mere size of the appropriations does not prove extravagance. True econ-

[1] Cf. Secretary Redfield's annual report for 1915, p. 12.

omy does not consist simply in making small appropriations, but in a wise and careful adjustment of expenditures to income."

President Wilson is more nearly right than Representative Gillett. What the people need and desire is more properly the basis of what the nation shall spend during its next fiscal period than what on the present basis of taxation is its probable income. A social and fiscal program must take into account both what the people need and desire and what is the probable income, but, if there is conflict between these, it is not at all clear that the needs, or even desires, of the people shall be denied because on the present basis the income is not sufficient. If the need and the desire are imperative enough, new sources of revenue will be found or increased returns from present sources will be secured. It is of course possible that we shall not want to spend all our income. But again that is determined in the last analysis by the "needs and desires" of the American people.

THE HORIZONTAL CUT — THE WAY TO REDUCE IS TO REDUCE

After impressing, by skillful repetition, on the public the true "awfulness" of these large appropriations, just as the advertising man repeats the name of his nostrum, the economy-politician says we must reduce these immense appropriations. If he is honest, his first thought is to study departments and propose changes in appropriations and in organization as the changing needs of the community show necessary. But that is too difficult a course, too prolonged, un-

necessary. He takes the easier course. He adopts a slogan — probably, the "*way to reduce is to reduce.*" "Let us cut last year's appropriations twenty per cent. Last year's appropriation was $2,000,000; we thus save $400,000." Economy has won the day. If our economy-politician is really clever or cunning he will make last year's appropriations the basis, and thus under a twenty per cent. reduction he can actually provide for an increased expenditure of money. This could happen in any case where a department spent only 80 per cent. or less of its last year's appropriation. By making appropriations rather than expenditures the basis of his cuts, much effective fooling of the public can be done. Of course where appropriations do not lapse, that is are not turned into the general fund of the treasury, at the end of the fiscal period, a very favorable situation is produced for the economy-politician for his cunning. All funds that are not used are credited to the department for the next year, but the politician knowing this, disregards it and confines his public discussion to new appropriations.

The horizontal cut is characteristic of the mechanical point of view of the economy-politician. Despite many new social demands made upon some departments and fewer upon others, despite extraordinary local conditions or emergencies of any kind, despite even new duties definitely assigned to departments by the legislature, the economy philosophy says, "The way to reduce is to reduce," and reduction follows. This, it may be urged, is not the inevitable result of the economy plan. Perhaps not, but it is a normal result. The basis of budget-making is not last year's

appropriations or expenditures, but this year's community conditions — poverty, illness, unemployment, the need for recreation and education and the like. It is not how much money must be saved, but the human life that is to be saved, conserved and improved.[1]

We return again to the point of view that budget-making is not merely a matter of dollars and cents — of juggling financial facts and even statistical facts in the legislative halls " far from the madding crowd." Budget-making is in its final analysis dependent on a socio-economic-political program. To what extent this is so and how fundamental its relation to government is the subject of the next chapter: " The Budget: The Essence of Government."

[1] And this indicates a sense in which the budget is intimately related to economy. But it is not the economy of dollars and cents. It is economy in the sense we speak about our national economy — our social economy. It is bound up with the whole question of government-management, just as economy in its original meaning is related to the whole question of household-management.

CHAPTER II

THE BUDGET — THE ESSENCE OF GOVERNMENT

WE turned loose recently into the literature of the budget propaganda a graduate student of a university who had the usual modicum of information about governmental administration but who was genuinely interested in the budget problem and keenly intelligent. About a week later he came back and said:

"Yes, I read that budget stuff. It always begins in a reassuring way by affirming that the budget is a vital subject and of very great importance to the public welfare. But before the discussion gets very far it centers around 'fund statements,' 'operation accounts,' 'assets and liabilities,' 'revenues and expenditures,' and the whole technical vocabulary of the accountant about which I know practically nothing. The point always turns upon some question of accounting definition or procedure. *There is never a word about public welfare, health or education, or anything.* It is a question of orderly arrangement of figures on the basis of existing accounting methods. It is a question of the manipulation of figures."

This mechanical view of budget-making which is so prevalent will never give us even an adequate idea of the budget as an instrument of economy. So long as the budget is viewed solely as a question of finances, of financial methods and of financial policies, it keeps itself in an air-tight compartment with an imagined feeling of self-security. It was so with the fathers of

the recent proposed New York constitution. The way they and an imitative press expressed their satisfaction with the work which the convention was doing was most superior, self-satisfied, unctuous. They awoke the morning after the election to find a 400,000 majority rolled up against their proposals.

Mayor Gaynor of New York really understood the philosophy of budgets, taxation and economy. The story is told of him in connection with one of New York City's remarkable budget exhibits. Economy was in the air. Mayor Gaynor was looking around and came finally to the Charities and Correction exhibit. Commissioner of Charities, Drummond, who happened to be there, called the attention of the mayor to a placard which his own department had prepared and which read as follows:

> *"There is no merit in retrenchment when the savings come out of the bodies of men, women and children."*

"Yes," said the mayor in reply, "but you must remember, Commissioner, that the taxes also come out of the bodies of men, women and children."

ACCOUNTING NECESSARY BUT SUBORDINATE

It is the social facts back of the budget that are of most significance. The accounting facts are only refined ways of expressing these social facts, but in the process of refinement the social facts have evaporated. The clearest evidence of this is that budgets up-to-date are practically universally without a social program and are frequently without a revenue program.

But we would not be understood to disparage sound accounting. Business methods must be introduced into public finance. Leaks, grafts, "poor business" must be checked and stopped. Economy, as far as is consistent with social need and society's ability to pay, should be secured. Accurate knowledge about the sources, the expenditures of public money and the costs of public service ought to be currently available. We want all these things, too, but we are insisting here that they be sub-ordinated to the social policies, that they be clearly recognized as a means to an end, that they be kept or prepared to throw light on public policies.

THE BUDGET MORE THAN A FINANCIAL DOCUMENT

The over-emphasis on the financial aspects of the budget has gone along with the demand for efficiency. Efficiency was interpreted to mean the maximum output per man, per machine, or per tool. It was interpreted to mean the elimination of unnecessary motions. Human efficiency was to become merely a phase of mechanical efficiency. This point of view and the reasoning based on it was carried over into budget-making. The efficiency of democracy must be looked into. The stumbling, halting, groping of democracy for a way to a higher plane aroused the ire of the efficiency expert. He was impatient. He set to work. And he demonstrated once more that the most *immediately* effective government was that of a benevolent despot, and sometimes not benevolent.

But there has been a recoil both in industry and in government from the operations of a mechanical effi-

ciency. A new tack was taken; a new point of view controlled. Perhaps one of the most significant aspects of the new efficiency is the importance of by-products. Carried over into government this meant, for example, that the by-products in the way of civic education were as important as the direct results. Efficiency became humanized and democratized. The former view of efficiency was accompanied by the commission form of government for cities; the latter by the city manager plan. The segregated, that is the minutely itemized, budget was an expression of a mechanical efficiency; the recent changes proposed permitting larger administrative discretion are in the direction of a genuine efficiency. The conception of the budget as merely a financial instrument is a phase of mechanical efficiency. The recognition of the social importance of the budget is the dawn of a true efficiency.

SOME SOCIAL ASPECTS OF THE BUDGET

The budget by providing the funds determines not so much how much money shall be spent for this, that, or the other thing, as how much protection of life and property the citizens are to receive, how much education they shall get, how comfortable or how good shall be the living conditions of the community, and other questions intimately related to the daily life of the citizen.[1] It is the emphasis on the financial aspects

[1] "Inefficient government is the greater evil because, whenever it knowingly or unknowingly fails to remove the causal conditions, it actually produces the weaknesses on which personal and social evils thrive. Inefficient government moves with the momentum of 100 per cent. of the population, using energies and

rather than on social and economic aspects that makes the subject uninteresting to an ordinary citizen, and confusion results from loading the subject with the technical vocabulary of the accountant. The citizen must view the budget not merely as an instrument of economy, but as the determination of the fundamental policies of government. Attention to bills determining policies is futile unless appropriations go with them.[1]

It is this social view of the budget that Gladstone had in mind when he said: "Budgets are not merely affairs of arithmetic but in a thousand ways go to the root of the prosperity of individuals, relations of classes, the strength of kingdoms."

We can say that our taxes are too high or we can say, as has been said, that "the feeling grows that our government agencies are going too fast and too far;

signatures of rich and poor, weak and strong, refined and vulgar alike, while social evils move with the momentum of their victims and their exploiters only. In the name of all citizens the schools are probably injuring the physical, mental and moral health of more children every year than private philanthropies are relieving in a generation. The distribution of taxes in the name of all citizens produces more inequalities of character, health and opportunity in a year than churches, schools and philanthropies altogether will remove in a decade, unless directly related to government agencies." (William H. Allen, "Modern Philanthropy," p. 385.)

[1] "The budget therefore is to the political court of first instance (the legislature) and of final appeal (the electorate) what established judicial procedure is to courts of law and equity. That is, a budget is an orderly means whereby issues between contesting parties may be defined, and with reference to which facts may be adduced and arguments made before decision is asked for at the hands of those who are responsible for the expression of public opinion on matters of government." (Frederick A. Cleveland, "What a Budget May Mean to the Administration," p. 40.— Taken from Proceedings of Conference on Commercial Education and Business Progress, Univ. of Ill., Apr., 1913.)

that they are not organized in a way to do their work efficiently; that they have not the means of locating and removing inefficiency." ("Constitutional Provision for a Budget," Frederick A. Cleveland, p. 191 — Reprinted from Proceedings of Academy of Political Science, 1914.) We can say that expenditures exceed probable income and proceed to reduce them; or we can say that the new services proposed are imperatively needed and find new sources or added sources of revenue, e.g., a 50 per cent. income tax on incomes in excess of one million dollars a year or a rapidly progressive inheritance tax, or a tax on gasoline. We can say that the dairy and food department is getting twenty-five thousand dollars too much and decide the issue as thus stated; or we can say that we shall substitute post-cards for inspectors and make our dairies a menace to the health of the state. We can say that the department of education received thirty-nine thousand dollars last year and that is all we will give it this year; or we can say that in spite of increased school population, of the need for continuation schools by workers between fourteen and seventeen years of age in the industries, of the increased demand for recreation centers, evening schools, public lectures, or what not, the appropriation must be kept within last year's allowance. In other words, we have always the alternative of stating the question before the executive, the legislature or the public in terms of the accountant or in terms of the social engineer. This book prefers to discuss the problem from the social rather than from the accounting point of view though it is not unmindful of the importance

and the place of the accounting reconstruction of public finance.

And if one were to express summarily the test of the effectiveness of expenditure of public funds in the light of the social view of the budget, he might word it as follows: *Social energy as expressed in public funds must secure in terms of social welfare results greater than the same expenditure privately made.*

THE BUDGET — THE SOVEREIGN ACT

It is, too, this social point of view which makes the budget the sovereign act. If the budget is more than a matter of arithmetic, if it is more than a financing of an existing governmental organization, if the facts determine the form and force of governmental power, if it is really the formulated expression of control of governmental activity, then it is through this instrument that the sovereignty of the nation or state is expressed. Where, therefore, power rests in determining the character of the budget there is the sovereign power for the budget is the essence of governmental power.[1]

THE BUDGET AS A MEANS TO DEMOCRACY

We were told in our school days that the history of the English Parliament was largely the history of the increasing control of the Commons over the purse strings, and that all other subjects dwindled into in-

[1] "The passing of the budget, as the term budget is used in this discussion, is an attribute of sovereignty." ("Evolution of the Budget Idea in the United States," Frederick A. Cleveland, *Annals of the American Academy of Political and Social Science*, p. 20.)

significance in comparison with this. It was this control over the purse strings that gradually changed Parliament from a merely expressive body, telling the king what the state of public opinion was, to a supreme body itself determining finally public policy in the light of a public opinion which its membership expresses.

But the important fact is not merely the gradual acquirement of this power, but the utilization of the power. A king wanted to declare war and he needed money. The Commons made the situation the basis of the negotiation for popular rights or demands which the king had heretofore refused to grant. It was this use of the power that has given us the very democratic English government of to-day. This procedure clearly reveals the budget as the controlling fact of government — controlling not only money matters but the whole public policy.

A recent analogous use of an appropriation bill to achieve similar results is thus described by Congressman Fitzgerald:

"We abolished the Court of Commerce in the Appropriation Bill. I was somewhat instrumental in doing that. I was in favor of it. I thought it should be abolished. There was a great difference of opinion. The President was very strongly in favor of retaining it, and yet there was a two-thirds vote of the two Houses in favor of abolishing that court. Of course, if a bill could do it and come before the Congress, it could have passed over the President's veto. But the only way to accomplish it was to incorporate it in the appropriation bill. Whether it is a desirable thing to do or not, apart from that, under the Anglo-Saxon theory of government, the representatives of the people should be in a

position to compel an executive by the coercion exercised by the refusal to grant necessary supplies to conduct the government, to acquiesce in legislation that two-thirds of the two Houses would say is particularly desirable." ("Budget System," p. 315.)

And by a similar use of appropriation bills the Tariff Commission was abolished.

No time need be spent explaining or illustrating the influence of appropriation acts on government and on the community. The results are too patent. But that failure to appropriate may and does produce results not less positive, and, at least occasionally, deplorable.

On December 3, 1914, in an address before the New York Maritime Exchange, Secretary Redfield appealing to this influential body of public opinion on matters of steamboat inspection said:

"Should some day an accident occur because there was not time for the searching study at which we aim or because an exhausted inspector passed something over, we will deal firmly with it, but the responsibility will not in the last analysis rest with us *but with those who provide and with those who can move the providers to provide.*"[1] (1915 Report of the Secretary of Commerce of the U. S., p. 15.)

The facts had been repeatedly presented to Congress. It was notorious that the steamboat inspection service was both undermanned and overworked and that it needed a competent board of naval architects.

The Maritime Exchange did nothing.

Congress did nothing.

On July 24, 1915, the steamer *Eastland* turned turtle,

[1] Italics ours.

and over eight hundred persons were drowned in the Chicago River.

A colossal tragedy like this is needed to drive home the need for appropriations that should have been granted and which, if granted, would have made such a tragedy impossible. The report on this subject concludes:

"Notice is given it here to emphasize the importance of the recommendation that this Service be placed upon a scientific as well as upon a practical basis through the establishment of the board of naval architects for which the statement calls. This is a remedial measure of the highest value which would provide a technical marine inspection, heretofore impossible, for which neither force nor funds have been provided but which would safeguard at the source, so to speak, all parties in interest in our merchant-marine service as is not now practicable." (Report of the Secretary of Commerce, 1915, p. 15.)

The same report on the same page drives home a similar lesson. The Secretary points out the inadequacy of our present motor boat laws. Deaths of individuals in all parts of the United States due to the very facts stated in the report are too scattering to impress a pork barrel Congress. They do not have the publicity value and the tragic appeal of the simultaneous deaths of hundreds. Listen to Secretary Redfield: "The existing conditions are a menace to the lives of innocent and unsuspecting passengers and should not be permitted to continue."

And then he adds:

"Here and now for the third time the Department makes these facts clear and asks the authority, which it now lacks,

to protect the lives of innocent passengers. If that authority is not furnished, the responsibility for the loss of life which is certain to happen will not rest upon the Department. Fortunately, as is explained under the heading of the Navigation Service herein, men with vision connected with motor-boat interests are appreciating the dangers of the existing conditions and are united with the Department in favoring the legislation which is described and which will be submitted to Congress at its next session."

And here again unless there goes along with the law an adequate inspection service, what avails the law? Appropriations clinch laws. And again if other disasters like the *Eastland* follow because of inadequate or no appropriations, then the responsibility in the last analysis is on those " who provide and on those who can move the providers to provide."

This ramification of the budget everywhere into the governmental system has been more than once noticed. Representative Sherley has worded it thus: " These reports (majority and minority) would bring to the attention of this House and require the consideration by it of the real purposes of government and legislation, for in the final analysis nearly every proposition that comes before a deliberative body is one either of taxation or expenditure." (" A Budget Proposal," Speech of Rep. Swagar Sherley, Feb. 28, 1913.)

On the revenue side Frederick A. Cleveland has put it in these words: " The whole question of business prosperity and of equity between man and man within the jurisdiction of the state is involved in the revenue and borrowing policy quite as much as in the state's spending policy." (" Budget Systems," p. 271.)

The budget, ramifying as it does through our whole governmental system and social organizations and determining their character, is the essence of government. The budget whether unorganized as at present or carried on through the orderly procedure proposed in this book determines what force there shall be in law, determines whether it shall be merely good intention or pious aspiration or whether it expresses a form of social conduct to be transgressed at your peril. The whole question of administration, which means only law enforcement, is tied up in the budget. Or looking at it from another angle, our budget determines the character and extent of our civilization — our educational system, our safety, our welfare, our health, everything that raises us above the brute and the hermit.

THE BUDGET AND THE SOCIAL ORGANIZATION

There is yet another point of view from which the budget conception here presented may be emphasized. It is the point of view of the Society which the government to be financed by the budget is to serve. The character of that society will influence greatly, if it does not determine absolutely, the budgetary procedure of the government.

If the society is a static society, then the budget procedure is a simple matter. The limits of governmental action are determined, the form and organization of governmental administration are settled, and the budget is merely a problem of financing this governmental organization. Governmental action is largely routine. No problems of public policy are involved, no changes

in governmental structure are necessary, the budget is merely a matter of arithmetic, a matter of dollars and cents. In such a society the budget may be merely an administrative measure and turned over to executive officers. This is true also where the social organization is simple or rudimentary.

On the other hand in a Society that is not simple and not static, an entirely different relationship of society, government and budget must exist except where social needs are reflected, not through a democratic organization of government but through an autocratic organization. There, the very character of the government organization is a hindrance to proper budget procedure. If the governmental organization reflects social needs not directly through the social pressure of conditions, but indirectly through the medium of a King, or aristocracy, which determines largely in its own interest how far this social pressure shall find expression in the government and particularly in the budget procedure, then the budget is merely a means of registering what the aristocracy or the autocrat thinks good for the society. Germany is a notable illustration of this, but unfortunately it would take us too far afield to outline in detail these general statements.

But in a complex progressive industrial society with a representative democracy as the form of government, the budget procedure must meet new tests and serve other purposes. This is certainly now true in the United States.

Two conditions may exist in such societies. The political faith and practice of the people may regard

that government best which governs least. Its motto may be "*Laissez faire.*" Its activity may be summed up briefly: "Do nothing." Under such conditions the whole question of social budget-making is in the hands of private individuals and private organizations and this situation need not detain us any further.

But in twentieth century, complex, industrial America, where government has broad social welfare ends to serve, and where it must be militant, aggressive, progressive and positive, the budget procedure must be responsive to the social needs.

The representative system of government is peculiarly fitted to this kind of social organization because the machinery exists for registering directly through the representatives the multiple social needs. In this kind of society questions of public policy are continually presenting themselves, governmental organization is highly specialized, fluid and adaptable. Government ramifies into the lives of all the people in thousands of ways. There is continuous need for new projects, new and changed administrative organization. These must be financed through the budget. Without the funds to finance these new projects and to sustain old projects, government will break down, or through perversion government will create or aggravate social conditions which it is designed to prevent or allay. The budget procedure, whatever it is, must be sensitive to the multiple needs of a complex industrial social organization.

CHAPTER III

THE EXECUTIVE BUDGET

WHILE economy is most frequently urged as the reason for the adoption of *a* budget system, the particular form of a budget system that shall be adopted is tied up to another idea, namely, *responsible government.*[1] The contemporary discussion takes practically for granted that there is an inevitable connection between what is called responsible government and the so-called executive budget. The reader of budget literature will find the words "executive budget" glaring at him from practically every paragraph. The words will be used in a variety of meanings and in a variety of contexts. It seems therefore of fundamental importance that there should be a clarification of the confused and various meanings of the "executive budget" and its frequently associated phrase, "responsible government."

[1] "The political necessity for the adoption of a budget procedure lies in the fact that it is the only effective means which has ever been devised for enforcing accountability and responsibility on an executive who has sufficient power to make him a leader, i. e., to make him effective in the preparation and submission of plans proposed for adoption and to enable him efficiently and economically to execute them after they have been approved and financed. The economic necessity for the adoption of a budget procedure lies in the fact that demands for service by the government are going to continue to increase, and with this the necessity both for careful, intelligent planning by the management and a strict censorship on the part of those who pay the bills." ("Budget Making and the Increased Cost of Government," by F. A. Cleveland, *Amer. Econ. Rev.*, Mar., 1916.)

While it may be necessary for us to examine in some detail the specific form of executive budgets as they have been presented to the American people, it will be well to consider in this chapter the theory undefiled by the compromises of practical politics. This will give the executive budget idea its best chance of acceptance.

It is important that the basis of the case for the executive budget should be clearly understood as those who advocate it understand it. And fortunately there is at hand condensed statements of the reason for it by Mr. Cleveland, the principal and the most intelligent expositor of the executive budget idea in the United States. He says summarily: "Public business that costs the country millions of dollars each year is conducted by an irresponsible bureaucracy, operating under the direction and control of irresponsible legislative committees. There can be only one result — irresponsible government." ("Constitutional Provision for a Budget," Frederick A. Cleveland, Reprinted from proceedings of Academy of Pol. Science, 1914.)

He says more fully:

"American institutions have had quite a different history. While the evolution of a technique of responsible management has been going on abroad, we have drifted along and done practically nothing to reconcile our charters of liberty to make them effective as charters of powers. Our early political acts, as in Europe, were directed toward the negation of executive authority. Our first acts were to destroy the executive. Then the federal congress recommended the organization of state governments with executive branches, thinking that all civil administration could be thus conducted. For fourteen years we tried to run the federal government with

no executive department, but without success. Then we adopted a system in which an executive was provided for, but left out of our written constitution all of the essentials of responsible *and responsive* leadership.[1]

"From the beginning our governments have been built on negative lines — they have lacked the machinery for getting things done in a manner to command the respect and the support of the people. Our constitution makers have thought little about the adjustments necessary to make our fundamental law a charter of powers. Much attention was given to the two great instruments of popular control over the executive — the 'electorate' and 'representative body'— because these were thought to be necessary for the protection of our liberty. But in our institutional plans we failed to provide an effective 'prime mover,' and we have failed to recognize the uses of the 'electorate' and the 'representative' body as instruments of control over an institutional prime mover.

"The motive force in government, as well as in all other institutions, must be an executive. No matter what instruments of control over this motive force are provided, these cannot be effectively used unless they are applied to a 'prime mover.' The executive must not only have the power to get things done, but also must be required to exercise this power *in the face of a possibility of prompt retirement in case his leadership is not supported.*[1] Neither a broad 'electorate' nor a great 'representative body' can act effectively or intelligently unless it has before it a definite well-considered plan or policy; and the one best qualified to prepare such a plan is the executive. But the executive should have no power to act until his plan is approved, and he must know that every proposal submitted is open to closest scrutiny. Otherwise the government cannot be made responsive to the will of the people as expressed through representatives in expressing approval or disapproval.

"Instead of providing in our system for utilizing the 'electorate' and the 'representative body' as instruments

[1] Italics ours.

of control (the only purpose to which they were adapted) and then developing an executive machinery subject to this control, which would be responsive to the will of the people, we began with an executive who had no power of leadership. And then, as demands for institutional service increased, we did violence to every principle of representative government — we sought to develop the 'electorate' and the 'representative body' as prime movers — and to utilize the 'executive' primarily as an instrument of control. We have done this wittingly. We have done this because we distrusted the representative system — for fear the 'electorate' and the 'representative body' would fail to prove effective as instruments of control; and that the executive machine would run wild. We have done this in the thought that by making the executive a responsible leader we might possibly sacrifice those liberties for which our fathers fought — preferring to rely on written constitutional inhibition rather than on the representative system for control over a government of powers. We have succeeded in one thing only — the one thing we started out to do — demonstrated to the world that under written constitutions a republic can be established in which the executive can do little harm. We have also demonstrated to our own satisfaction that under the system which we have developed the executive can do little good.

"But there have been also other results. It has been found to be impossible to operate a great complex institution at all successfully without some kind of leadership. Not having provided in our constitution for responsible leadership for common welfare purposes within the government, irresponsible leadership has been developed by organizations of men for selfish purposes on the outside. In place of a responsible leader who may be held to account and made responsive to the will of the people, we have the 'boss.' Instead of the 'electorate' and the 'representative body' having laid before them each year a well-prepared plan, a definite proposal, for which a responsible executive may be held to account, the people without knowledge of what is going on have seen hundreds of millions of dollars of public resources each year

voted away by a system of 'log rolling'—they have seen great national resources wasted that might have been effectively used for public service. Instead of having a budget submitted by an executive who can be made responsible to the people for every item of past expenditure and for every proposal for future expenditure, as well as for devising ways and means that are acceptable, we have developed a system of 'pork barrel' finance; and in addition to being criminally wasteful, we have the most inefficient public institution that the world has ever known." ("Responsible Government," Municipal Research No. 69, Issued by New York Bureau of Municipal Research, Jan., 1916, pp. 7–9.)

And the principal obstacle in the way of a thoroughgoing executive budget is our principle of fixed terms for executive officers. Mr. Cleveland vigorously discusses this principle in these words:

"This brings us to the single executive — the chief executive type of organization. And initially it brings us to the consideration of the principle of a 'fixed term.' The principle of 'fixed term' for the executive was not adopted with a view to making this branch of the government more efficient; it was adopted to insure the successful operation of the principle of popular 'election'; it was directed against usurpation and the irresponsible use of power. The makers of our constitutions had before them at all times as the one great end to be achieved at any cost, the protection of the liberties of the people without resort to revolution. 'Frequent elections of officers for fixed terms' has been one of the many constitutional provisions adopted to insure this result. Another means of insurance was to take away from the executive powers of leadership. But when (with increasing demands made on the government for service) it was found that great waste and inefficiency resulted from lack of responsible executive leadership, the people did not dare to restore to the executive sufficient power to make leadership

effective. This was because their executives had fixed terms — *because, within the period of their terms, there would be no way of getting rid of one who acted arbitrarily, and who overrode the will of a majority, as expressed through the chosen representatives of the people.*" [1] (Ibid, p. 17.)

Though there are at least apparent contradictions [2] to this statement in Mr. Cleveland's discussion of the budget, he has frequently reiterated it and emphasized it. On the basis of this incompatibility between an enforceable responsibility to the people and an arbitrary fixed term, he explains the defeat of New York's proposed new constitution:

"Another conclusion is supported not only by recent experience in New York but by the whole constitutional history of English speaking people, viz.: that so long as our chief executives are elected for fixed terms, without any means for prompt recall, fear of executive usurpation (the use of executive power in a manner to impair our personal, political, and civil liberties) will continue to make the people hesitate." (Ibid, p. 19.)

THE EXECUTIVE BUDGET AS A REMEDY FOR EXECUTIVE IRRESPONSIBILITY

Irresponsibility being the fundamental trouble with the present machinery for considering and financing governmental needs, the remedy is obvious and simple. It is: *Fix responsibility.* But it is pertinently asked: *Responsibility for what?* In the first place responsibility for budget proposals. Since it is the duty of the executive to carry out the governmental program

[1] Italics are ours.

[2] Cf. another quotation from Mr. Cleveland on p. 56 of this chapter.

for the ensuing fiscal period, "responsibility" for making the plan ought to be placed upon him. Moreover, since it is the legislative function to "grant funds" it is "incompatible that the proposer should also be the disposer of public funds." [1] Again, the proposals "should not reflect the interests of a single individual [2] or a single district — but the interests of the whole community of associated interests which are composed in the state or nation." Since the legislators are representatives of small districts and the executive is representative of the state or the nation, the proposals should be prepared by him. The responsibility for budget proposals must obviously be placed in the executive. *This is the way the argument is presented by the advocates of the executive budget plan.* But no American scheme has proposed giving power over the legislative or judicial estimates to the executive, and hence in this particular the executive budget is a misnomer. He or a financial officer transmits these at the time the estimates of the executive proposals are submitted.

But in order that these proposals, after they have been presented to the legislature, shall have adequate consideration and intelligent defense, it is proposed that the executive and the administrative chiefs shall have the right to be heard during the legislative consideration of the budget, and it shall be their duty to appear before the legislature on budget matters when

[1] "Evolution of the Budget Idea in the United States," by Frederick A. Cleveland, in *Annals of the American Academy of Political and Social Science,* Vol. LXII, No. 151, Nov., 1915, p. 18.

[2] Is not this an argument also against giving the executive a preponderating influence in budget-making?

requested by the legislature. In countries whose experiences are used by way of analogy to show the desirability of the executive budget for the United States, the valuable supplementary power of interpellation is present in the legislature, but in none of the practical schemes proposed for America is this power authorized by the legislature. The interpellation gives power to individual members or minority groups in the legislature — as distinct from majority groups — to secure answers from administrative officers on subjects under their jurisdiction or about their own activities. Because it will help secure adequate consideration and because it will help secure general publicity, the budget proposals are considered in the committee of the whole rather than in standing committees.

But the advocates of the executive budget plan do not permit the budget proposals to go before the legislature with *freedom* of action by the legislature. The legislature is limited either to reduce or to strike out items in the executive proposals for executive departments. If the legislature wants to add anything to the budget it must wait until after the executive proposals have been disposed of by the legislature. Then in the closing days of the session legislators may make their proposals, subject to executive veto. Incidentally these proposals require a larger vote than the executive proposals. After the budget has been passed, it will be an unusual thing to get the majority of all the members elected and it will be impossible to get the usual two-thirds to override a veto. The underlying theory is that the legislature is merely a ratifying agency and all legislatively initiated proposals

are to be discouraged and to be made difficult of passage.

If the legislative discussion should reveal serious omissions in the executive budget or inadequate support for state or national departments, the legislature is practically powerless. If the executive wishes he can make the change or revise his proposals at any time before final action by the legislature.

RESPONSIBILITY TO WHOM

But " responsibility " implies two questions: " Responsibility for what," which we have just considered, and " responsibility to whom," which we shall now consider. Whatever responsibility there is in the government must be fixed and enforceable. It can be enforced only when there is control vested somewhere. The responsibility of our government is to the electorate.

This responsibility to the electorate becomes important when there is a difference on an important question between the executive and the legislature. A budget system must provide somewhere for effective popular control. Without this control the aggrandizement of executive power would not be accepted by a democracy conscious of what it was doing. Executive and legislative action must be brought to the test of approval or disapproval by the electorate. This view is " the only one that is compatible with the evolution of constitutional law where ' control over the purse ' has been effectively used to bring the institution and practices of a representative system into harmony

with the ideals of democracy and popular sovereignty." [1]

The theory of the executive budget implies three things therefore: (1) an aggrandizement of executive power, (2) a restriction of legislative power, and (3) ultimate popular control. The power of the executive is increased through no specific extension of his power, but through weakening legislative opportunity for action and freedom of action. The executive recommendations are given a preferred status in the legislature, and the conditions of passing them are very much easier than proposals legislatively initiated. In the theory of the executive budget this aggrandizement of executive power makes necessary popular control and it is included. But how it is to be made effective under the conditions of our state and national government is a serious problem confronting the advocates of the executive budget. At any rate, as will be shown in the sequel, all the practical schemes for an executive budget have provided for the increase of executive power but have failed to provide for the popular control which is so essential in the theory.

FIXING RESPONSIBILITY FOR BUDGET PROPOSALS

"Responsibility for budget proposals is definitely fixed in the executive budget plan." This claim is made over and over again by the advocates of the executive budget. What is meant by responsibility for proposals? Is a responsibility for proposals any more than a recommendation? It is true that under

[1] *Ibid.*, p. 21 ("Evolution of the Budget Idea").

the proposed plan these executive recommendations have a strong presumption in their favor because of the restriction of legislative action. But the responsibility in any case is placed upon the legislature for acceptance, rejection or reduction. And occasionally a legislature may be determined enough to propose new items or increase old items subsequently to action on the executive's recommendations and pass them over the executive veto if necessary. And the executive can thus shift whatever responsibility he had. But you can hardly interest a public in responsibility for recommendations when decision or action is placed somewhere else.[1]

Further, the executive budget procedure providing as it does that the executive may at any time before final action by the legislature amend or supplement his proposals removes whatever responsibility could be fixed upon him because of the fact that he made the proposals. He can "jockey" with the legislature throughout the session and shift the responsibility and by changing his proposals can confuse the issue.

DOES THE EXECUTIVE BUDGET PROMOTE EXECUTIVE LEADERSHIP?

"Executive responsibility for leadership" is regarded as one of the great achievements of the executive budget. In the discussion of the budget, respon-

[1] "It may be said that a national budget is the only effective means whereby *the Executive* may be made responsible for getting before the country a definite, well-considered, comprehensive program with respect to which *the legislature* must also assume responsibility either for action or inaction." ("The Need for a National Budget," p. 138, Message of President to 62d Congress, 2d Session, 1912.)

sibility for budget proposals and responsibility for leadership are closely connected if not identical. "Responsibility for leadership" is a queer phrase. What does leadership mean? Does it mean merely the fact of initiating proposals? If so, then words are used in other than their accepted meanings. Is it possible by making it the duty of the executive to prepare proposals to create what we usually call leadership? Is it possible to create executive leadership by making leadership in the legislature impossible, and by creating presumptions in favor of executive proposals and limiting the freedom of legislative action, to create executive leadership? *Autocrats are made that way, but not leaders.* A person with genuine qualities of leadership has under the existing laws all the opportunities for leadership that could be desired. The opportunity for making budget proposals and other recommendations is now an executive duty. In the Federal Constitution the basis of this duty is found in the following provisions of the Constitution:

"He (the President) may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices." (II, 2, 1.)

"A regular statement and account of the receipts and expenditures of all public money shall be published from time to time." (I, 9, 7.)

"He shall from time to time give to the Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary." (II, 3.)

This provides the opportunity for genuine leadership, and no amount of coddling by law or constitu-

tional amendment will bestow upon quite honest and well-meaning persons the spiritual force that is properly called leadership.

THE EXECUTIVE BUDGET AND THE ADMINISTRATION

The executive's proposals are presumptively law unless rejected or reduced by the legislature. What the executive refuses to place in the budget proposals is presumptively destroyed unless positive action is taken by a majority of the members elected to each branch of the legislature, or in case of a veto, by a majority of two-thirds. Moreover, should the legislative discussion show, or public opinion demand, either a change of the form of the appropriation or an increased amount, the legislature would have to wait upon the executive to make the change. With the large majority required to pass a bill the presumption in favor of the executive's proposal is decisive. However one looks at it, the results are surprising in view of our theory of the function of the legislature in government. In England, which is obviously the source of the suggestion of this form of budget-making, the executive is merely a committee of the legislature, and a decision in case of difference of opinion is left to the final arbiter of democracy's problems — the electorate. With the presidential form of government and without any machinery for getting an expression of the voice of the people the method is unsuited to our needs. This form of budget-making says in fact, in a difference of opinion between the executive and the legislature, that we must follow the executive: in other words, the autocratic principle is

accepted rather than the democratic. This point will be elaborated more fully in a later section.

Look at the question more concretely. Suppose Governor X or President Y should leave out the civil service commission from the budget. Or suppose he should omit the salary of a particular examiner. In either case the legislature could not add the item during the consideration of the budget bill. A legislator might subsequently bring in a separate bill in each case with the presumption strongly against its passage.

But a more venial-minded governor and a shrewder one would have proposed an appropriation on which it would be impossible to run the commission or any other department. The legislature could do nothing during the consideration of the budget bills, and it is doubtful if anything could be done subsequently because most of the members of the legislature would have gone home.

Suppose, for example, that the executive wanted to "discipline" a department or force certain appointments or decisions or a change of policy. He proposes an impossibly low sum. The administrative officers resign or capitulate. He then sends an amendment to the legislature increasing the amount to the departmental requests. This provision found in the executive budget plan submitted to the people of New York gives the governor the power of "jockeying" all the appropriations and controlling thereby practically the whole public policy.

It is this power to thwart, by indirection, that is the most effective way of defeating good public administration and making the control of public business a pastime

for the attorneys of "regulated" private business.

It has been said that we have shackled administration in America. We have pursued a negative policy. Perhaps! Surely we could give administration greater leeway — as this book proposes in Chapter V. The demand has been for a positive policy for the governor as the leader of the administration and of public opinion. But what has been done is the result of the "executive budget" as proposed. We have unshackled the executive. True, but we have shackled the legislature. We have adopted a positive policy toward the executive as legislator. Yes, but we have substituted a negative policy toward the legislature. "And why beholdest thou the mote that is in thy brother's eye, but considerest not the beam that is in thine own eye?"

A democracy is safer with an unshackled legislature than with an unshackled executive.

THE BUSINESS ANALOGY — DOES THE EXECUTIVE BUDGET REQUIRE LEGISLATIVE RECALL OF THE EXECUTIVE?

The argument that is ordinarily presumed to clinch the case for the executive budget is the "business analogy"— which in political campaigns becomes the battle cry: the business man's budget. A careful analysis of the "business analogy" is necessary and will now be made.

Assuming the effectiveness of corporation organization for corporation business, do the same conditions hold in the public business? Obviously not. Take a fundamental question. Who is the executive? In

business as likely as not the executive is the executive committee of the board of directors, but for the sake of the analogy we will waive this fact. The executive is the president or manager. He is the head of the whole business, manufacturing, advertising, selling, and administrative. His commission is directly from the board of directors. Is there such a person in American government? There is not. The governor presumably exercises a general control over the operating departments of government, but he is not in a presidential or a managerial relation to either the legislature or the judiciary, nor to the great quasi-judicial administrative commissions which are increasing so fast among us. The truth of this remark so far as the legislature and judiciary are concerned is evidenced by the fact that in executive budget schemes the executive may not revise the estimates of the legislature and the judiciary but must transmit them to the legislature as a ministerial act. The quasi-judicial character of the commissions seems entirely to be forgotten in the contemporary budget discussion. But the fact that the executive in the decentralized organization of government is not comparable to the executive in the centralized organization of business has been overlooked.

But perhaps a more serious incompatibility in the analogy is the reference to the power of the board of directors over the business executive's proposals and the proposed limitation of the power of the legislature over the governmental executive's proposals. The power of the board of directors over the proposals submitted to it is absolute. It may amend them in any way, increase, decrease, or omit items or add new ones.

It is proposed to limit a legislature's action on executive proposals to merely reducing or striking out, and while other action is possible later, the whole tendency is against such action. Because at the time such action would have to be taken, a goodly number of the legislators would have gone home, and the larger vote by which such proposals must be passed, makes it practically impossible or at least very unlikely to secure the requisite vote. And these measures are subject to executive veto.

Furthermore in a disagreement between the board of directors and the executive, the executive can be fired — thus enforcing responsibility to the representatives of the stockholders. *Do those who are proposing the executive budget also propose the legislative recall of the executive?* That is exactly what the business analogy means. No specific scheme of executive budget has definitely provided for the thing that the executive budget propagandists prate about so much — responsibility.

And that brings us to a point that might have been made in the beginning, namely, that the business executive is not the agent directly of the stockholders but of the board of trustees. He owes his office not to the stockholders but to the board of trustees. The governmental executive holds his commission not from the legislature but from the electorate (stockholders). It would seem, therefore, that there is, too, a different relation between the executive and the legislative body in business and in government, and an analogy that assumes an identity of relationship must not be apropos.

It must seem surprising that with such obvious

faults in the analogy, the proponents of the executive budget would cease using it, but only recently the Short Ballot Organization issued a pamphlet containing this statement:

"In a private business corporation the board of directors look to the general manager to furnish it with financial details. It expects the manager to frame up a program of activities, telling him in one way or another, not to go ahead until he has received official permission. Then they meet together and go over the whole business, trimming here and there, holding the manager down where he seems to be too ambitious or too erratic. But the board of directors never gives up its essential control. And it winds up by adopting the manager's program, as amended." ("Suggestions for Legislators of 1917," Bulletin of the National Short Ballot Organization, p. 8.)

IS EFFECTIVE POPULAR CONTROL POSSIBLE UNDER AMERICAN CONDITIONS WITH THE EXECUTIVE BUDGET?

Are we to have a one-man government? That is the fundamental question back of the executive budget propaganda. The executive budget program is not merely the substitution of orderly systematic ways of doing things we now do in a chaotic irresponsible way; it is a change of emphasis in our whole system of government from legislature to executive.

Its saving element in its theory is ultimate popular control. Any government under effective popular control would be accepted by a democracy. But no feasible scheme has been proposed in theory for the effective operation of popular control, and in the actual schemes proposed in Maryland and in New York there was no

provision whatever for it, despite the fact that the men who were largely responsible for the proposed constitutional amendments are the leading and practically only expositors of the executive budget idea in the United States. The actual method is thus outlined by Dr. Cleveland:

"Provision whereby any important issue may be settled either between the executive and a majority of the representatives of the people, or, in case this is not possible, by having the issue referred directly to the people at an election to determine which of the partisans to the controversy will be retained in the public service, the essential purpose of such action being to make the government responsive to the will of a majority, and to put the administration into the hands of persons who are in sympathy with the policy adopted." ("Budget Making and the Increased Cost of Government," by F. A. Cleveland, *Amer. Econ. Rev.*, March, 1916, p. 68.)

One is amazed at the character of the changes in our government necessary to fit the theory of the executive budget. Without attempting to define all the changes it will be well to outline what may normally be expected under the executive budget plan as it is advocated and suggest incidentally the radical changes proposed.

A fundamental disagreement between the executive and the legislature has occurred. For a solution, according to the plan, there is an appeal to the country. A general election is ordered. But what shall be done about the Senate of the United States or the Senates of the states? The members are elected for overlapping terms. Obviously this must be changed. We may suppose that the unlikely happens, and senators have the same term as representatives or assemblymen.

The election is held presumably to settle a particular issue. But is there any guarantee with the simultaneous election of a bicameral legislature and the executive that they will both be in harmony? In the light of our last election we have no reasonable ground for believing so. It is not at all true that a Democratic legislature would carry with it a Democratic executive or vice versa. Should there be a single house legislature proposed for this scheme? And now for the sake of the theory a single house legislature is declared essential, but even with a single house legislature would an executive elected on an issue such as is proposed be in harmony with the legislature? We know it would not necessarily be true. Do we want then the legislature to appoint the executive? In other words, does not the plan presuppose parliamentary government? Without going into further detail regarding the subject the foregoing analysis furnishes additional justification for Professor Fairlie's remark that if such changes are intended they "should be clearly understood beforehand and not be brought about as an incidental result of a new budget system."

But the fact that the executive is elected for a fixed term and has no responsibility to the legislature and cannot possibly be controlled until the end of his term is used as an argument for developing this executive leadership which is so essential to the budget system. The argument runs:

"The fact that we have a single executive gives to the President greater power as a leader and, therefore, greater reason for employing the means necessary to becoming efficient. In his power of appeal to the people he has been

given a great tactical advantage over Members of Congress. He is the one person regarded as representing the dignity and power of the Nation; he is the one person who can claim the attention of every man, woman, and child; when he speaks, the President is heard by every citizen elector. The fact that the President has a fixed tenure still further fortifies him for leadership. Under such circumstances a great constructive leader may undertake measures that he would not dare to propose if he were subject to recall by the legislative branch. If his budget proposals are denied by Congress, then he may carry on a campaign of education and force the members of the lower house and at least one-third of the Senate to stand for re-election before he must again go before the country for electoral support. If during his tenure he can demonstrate that he is right, the country has the advantage of his constructive effort and will support the policies which he represents. At the same time if he is wrong the constitutional barriers against usurpation of power are adequate to prevent the President doing anything for which he cannot obtain a majority following." ("What a Budget May Mean to the Administration," by Frederick A. Cleveland, Speech before Conference on Commercial Education and Business Progress, Univ. of Ill., April 16, 17, 1913.)

And without any feasible scheme of enforcing executive responsibility to the electorate we have made our government irresponsible — a constitutional autocrat for a definite term without any possibility of control. With the enormous power the executive has under the executive budget scheme, divorced from any enforceable responsibility, we have substituted a succession of constitutional autocracies for a representative government. To President Butler's famous question: "Shall we change our form of government?" his colleagues have given a surprising answer: "Yes." But the change is not to be in the direction that President

Butler so much fears and condemns, namely, direct government, but in the opposite direction of autocratic government.

BRITISH EXPERIENCE

British experience is frequently used to clinch the argument for a one-man government in the United States via the executive budget. The analogy is hardly apropos as will be shown in detail later. One point concerns us now, which is that in normal times the executive in England is not a person but a committee — a group of persons, which we all know as the cabinet. The whim of an individual is corrected by the consideration of others. The government proposal is not a proposal of the Prime Minister but of the cabinet. England does not have the executive budget plan as it is being ardently advocated in the United States.

But there is recent British experience that has a bearing on the executive budget plan as proposed for the United States. W. R. Lawson, in his book, "British War Finance," condemns the one-man Treasury and the one-man budget for its lack of control and its lack of responsibility. "It is only in British finance that the one-man Treasury and the one-man budget survive," he says. "In every other country worth counting, the national revenue and expenditure are surrounded by checks and safeguards which we disdain to use." (pp. 304–305.) More specifically Mr. Lawson says elsewhere:

"Sometimes they (the Chancellors of the Exchequer) are dreamers of dreams, who regard a Budget as an instrument

of social reform or class prejudice. The stronger the Minister the weaker will be the control exercised over him either in the Cabinet or the House of Commons. The more stormy the time the freer a hand he will have, and the easier it will be for him to evade criticism or to stultify it. Of this we have had crowning examples in recent years. Since the war began they have culminated in what is practically a financial autocracy. The Chancellor of the Exchequer for the time being is a supreme and almost irresponsible Minister. Of his own free will he invents new taxes and makes new fiscal regulations. Unless they be as intolerable as the recent alcohol taxes the country has perforce to accept them. Under our one-man Budget system it has no alternative. For the House of Commons to reject a Budget, or even a single item in it, might mean the defeat of a Government and a financial deadlock. It cannot be referred back to him as a French budget might be referred back to the revising committee. 'Take it or leave it,' are the only alternatives." (Ibid, p. 306.)

Waiving for the present the question whether the budget is an instrument of social reform, the spirit of Mr. Lawson's criticism of the executive budget system may be accepted — without accepting however his criticism of its use in England at this time.

In the extraordinary conditions which England found herself as the result of the war, a strain was put upon government to the breaking point. It had to yield or break. It yielded in the direction of executive aggrandizement. Under the recent change of ministry it yielded still more. But the practical autocracy which the recent changes established are not justified as right in principle, but right in the situation. The situation is extraordinary. There is only one object before the English people: to win the war. The na-

tion is united upon it. Parliament is united upon it. There is in the English Parliament practically no Opposition. There is no consideration of other problems. The situation calls for quick decision and coöperative action. Governments in ordinary times do not have to meet the situation England now faces. Lloyd George in his first speech as Premier put the case admirably:

"The fact that this is a different kind of organization from any that preceded it is not necessarily a criticism of its predecessors. They were peace structures; they were organized for a different purpose and for a different condition of things. The kind of craft which you have for river or canal traffic is not exactly the kind of vessel you would construct for the high seas. I have no doubt that the old Cabinets (I am not referring to the last Cabinet, but to the old system of Cabinets where you had the heads of every department represented inside the Cabinet) were better adapted to navigate the parliamentary river with its shoals and shifting sands and, perhaps, to cruise in home waters. A Cabinet of twenty-three, however, was rather topheavy for a gale. I do not say that this particular craft is best adapted for parliamentary navigation, but I am convinced that it is the best for war. In war you want quick decisions above everything. Look at the last two and a half years." (The New York *Times,* Dec. 20, 1916.)

And there is as usual in the English system ultimate popular control.

"I come to one point, which has caused some dismay — the new Ministries. But each Minister answers for his department exactly in the same way as under the old system, each Minister is accountable for his department, and the Government as a whole is accountable to Parliamentary control. The control of Parliament always has been and must be supreme, because it represents the nation, and there is

not the slightest attempt to derogate from the complete control of Parliament, which is responsible to the nation." (Ibid.)

ITS LESSON FOR AMERICA

England was forced into what is in effect an executive budget scheme, i. e., an autocracy — through an emergency. It was the logic of events. It was the question of the preservation of the national life itself. But no such situation exists in the state governments or the national government of the United States. No situation going to the question of the very life of the state itself confronts us. Surely a procedure that may be justified by such a crisis, and only by such a crisis and only for such a crisis ought seriously to be considered with reference to the ordinary processes of government and under ordinary circumstances.

CHAPTER IV

THE BUDGET PROPOSALS

THE foundation upon which in the last analysis the budget rests is made up of the social facts of contemporary life. Poor persons; preventable and prevented deaths; children of school age, educated, half-educated or neglected; dependent classes; oppression or service from public service companies; industry casting upon society its debit classes or assuming its own burdens — these are the facts that lie at the basis of the budget. Legislatures with a vision and understanding of their duty and their opportunity will see back of the thousands of dollars that are so glibly used in the budget discussion the perversion or direction of social resources to social, unsocial or anti-social ends in terms of contemporary life. These things the reader must keep in mind, too — and for the immediate present in the back of his mind.

The conventional budget discussion begins with the preparation of budget estimates by minor administrative officials. A similar treatment of the subject will be followed here, too.

THE FORMULATION OF BUDGET PROPOSALS

The executive's relation to present budget-making is twofold: the one in the formulation of the budget proposals, and the other in the approval or veto of appropriation bills as passed by the legislature. At the

present time the executive may have an influence on budgetary bills by sending in special messages while they are under consideration. It is proposed that the executive or representatives of the executive shall take a more active share in budget-making during its legislative phase by having a seat in the legislature without a vote. The treatment of this latter subject is reserved for a subsequent chapter.

The President of the United States is required "from time to time to give to the Congress information on the state of the Union and to recommend to their consideration such measures as he shall deem necessary and expedient." Every state of the union has a similar provision in somewhat similar language in its constitution regarding the duty of the executive. From this point of view the proposed budget is merely a systematic and effective way of giving to the public and to the legislature a complete picture both in fiscal and in social terms of the "state of the Union" or the "state of the State." Even were there no such constitutional provision there is need for the coördination of budget estimates with reference to state or national needs and state or national ability to "foot the bill." How we should proceed in the formulation of such budget proposals is the subject matter of this chapter.

WHO SHALL PREPARE BUDGET PROPOSALS IN THE FIRST INSTANCE?

For intelligent decision on the budget proposals the legislature will need a statement of social and economic conditions, a statement of the effectiveness of adminis-

trative experience in its relation to these conditions, the cost of governmental activity and a program for the coming fiscal period based on the social economic conditions, administrative experience and the cost data. A mere statement of figures in terms of organization units or objects of expenditures or even of departmental functions will not be sufficient for intelligent legislative budget-making, though it will be very helpful. The socio economic background should be explicitly stated.

What shall be the source of this fundamental information in budget-making? Who, in other words, shall prepare budget proposals in the first instance? It would seem obvious that those in closest touch with the concrete situations should organize this experience. They know. It is the best expert opinion we can get, and as men are more and more trained for the public service this opinion will be more and more expert and the experience better interpreted. Or in other words: Shall we capitalize this experience in the interest of better service or disregard it? We have seen in all phases of public administration and in private business, too, for that matter, the utter wastefulness coming from neglect to utilize every member of the organization in the public interest in the one case and in the company's interest in the other. In this fundamental matter of budget-making are we going to profit by this lesson? Of course we are. But while we want and should have this experience and this opinion, there is very grave danger of placing too much reliance upon them.[1]

[1] The foregoing and the following discussion has for its object

SHALL DEPARTMENTAL ESTIMATES BE REVISED?

The men near the problems may be too near them; these men may be so absorbed in the routine as to forget the larger issues; they may have grown "stale" on the job. There is need for a fresh point of view, and even for a naïve point of view. And for this reason there is need for review of bureau estimates by department heads and there is need for review of department estimates by some more general authority in order to secure this fresh point of view. This will mean in the final analysis the bringing to the test of the common sense of the political officers the experience and judgment of the experts available in the governmental departments. This is needed but there is a greater need.

The departmental estimates as they are prepared are the expression of the elements of the administration of the government. There is need here particularly for a wider perspective, for a sense of proportion, for a balancing of service against service. The government for the next year or biennium should be run on some plan — preferably a comprehensive plan. This element of plan should be embodied in the budgetary proposals. The comparison of services for efficiency, for economy and for service in the public interest is possible here and is stimulated by the effort to organize the elements into a comprehensive plan as far as that is

the outlining of the *general procedure* for the preparation of budget proposals. This consideration of the budget is limited to those departments over which the executive has control. The consideration of the preparation of budget proposals for those parts of the government not under the control of the executive is discussed toward the end of this chapter.

possible. The effectiveness of the revision of departmental estimates to secure these ends will be determined by the answer given to the question: Who shall revise departmental estimates?

SHALL THE FISCAL OFFICER REVISE BUDGET ESTIMATES?

It is frequently provided and proposed that the fiscal officer should revise budget estimates. Surely he is in most intimate touch with the fiscal conditions past and present and may be trusted to divine more accurately the probabilities than any other officer. This is the most natural suggestion in the world where the budget is merely a financial instrument.

The United States government was influenced greatly in the beginning by English precedents. On this point the influence was evident and persists to-day, despite, in general, the very great difference in our organization of government and in particular in the function of the Secretary of the Treasury and the finance minister in England. In the act of September 12, 1789, creating the Treasury Department of the United States, it was made a duty of the Secretary to prepare and report estimates of the public revenue and the public expenditure. The present law and practice is for all estimates to be "submitted to Congress *through* the Secretary and in no other manner, and in cases where no estimates have been submitted, the Secretary shall prepare estimates and include them in the book of estimates submitted to Congress."

The states generally have not followed the precedent of the federal practice. So far as anything is

done in the way of budget-making in the states, the governor, as a general rule, is made the officer through whom departments report to the legislature. The provision of the Maryland constitution, even before its recent amendment was highly exceptional. It provided that the comptroller "prepare estimates and reports of revenue and expenditures of state; and make to the legislature reports of his proceedings, and of the state of the treasury department within ten days after the beginning of each session." (Md. VI, 2.)

But the practice of the federal government needs to be discussed more specifically. So far as the budget is merely an orderly presentation of financial conditions past and present, and so far as it is merely a collection of estimates as made by the departments, then there is no very great objection to the budget being presented to the legislature by the Secretary of the Treasury as a ministerial act. But if on the other hand the budget is a social instrument of the most far-reaching importance, if it is the basis of the sovereign act *par-excellence,* if it is to be a coördinated document, then it should be submitted by a person distinctly representative of public opinion and reflecting it, and subject to effective popular control [1] for we live under a form of popular government. The finance officer neither in the nation nor in the state has these qualifications.

WHO SHALL REVIEW DEPARTMENTAL ESTIMATES?

The usual discussion of this point is surprisingly narrow. It would seem that the point depended en-

[1] This does not, of course, exist in American government except as men fear or bow to public opinion.

tirely whether it should be the executive or a board variously constituted, representative of the executive, of the legislature or of both. The question is wider than this, though this particular question may be answered if the subject is here limited to the executive departments which we regard as controlled by the governor or the President. Since the boards, whether they be a legislative reference bureau as in Illinois, a budget commissioner in Ohio, or a commission on economy and efficiency in Massachusetts, can be agencies only of the legislature or executive, they can have very little weight because of their indirect relation to the public. The important thing is what the executive or the legislative committee does to the information collected. In this relation, so far as these bureaus are representative of the legislature, their work is merely clerical and may be neglected here.

But if their work is sent to the legislature direct, without the authority of the executive, this plan is doomed to short duration. Their authority to cut, amend or in any way modify departmental estimates is a delegated authority or a usurped executive duty and must return to the source of the authority. The agencies to help the executive do the preliminary sifting, establish standards as far as this is possible, judge existing services, and investigate the conditions and results of departmental procedure can and do serve a useful function. A staff organization for the executive is highly desirable. But its place as a *means* must be constantly borne in mind. It would seem therefore from the administrative side and from the side of the correlation of administration and the policy of the

government that a representative of the public who comes in theory at least with a direct mandate from the people should be responsible for the revision of the expert estimates of the public officials and employees.

Moreover, the duty is in its very nature executive. But the executive is to revise these estimates not because he is well informed about them but because he is representative of the public. And the particular difficulty of the executive in his first year is not so much lack of information, which is bad enough, but lack of appreciation of the governmental service, and — what is perhaps the same thing — naïveté. The governor ought to have a naïve as distinct from an expert view of the government business, but he ought not to be naïve. And one way to protect the executive from a dangerous naïveté is to provide him with a technical staff. *In the conflict of opinion and judgment between the technical staff and the operating officers the executive must make decisions in conformity with public opinion.* This representative function which the executive serves is the fundamental reason for giving him the power of revising departmental estimates.

The budget proposals as submitted to the legislature should not be a collection of departmental estimates. They should be a coördinated instrument, balancing each service against every other and against the community needs and the financial resources of the community. The person who is to do this should be close to the people and responsible, so far as any one in our government is responsible, to the people. The executive officer presumably represents this state-wide or

nation-wide view, and is not confined to or limited by the details of any particular administrative service. The proposed budget should express this broad view, and the executive (not a subordinate) is the person most likely to give it effect.

A further reason is urged — and properly too. It is the executive who is to carry out the work approved by the legislature, and it is reasonable that he should have some say in the formulation of the plan, even though the legislature may modify it as it sees fit.

The powers of the principal executive officer of the nation and of the states provide the machinery for the effective use of this duty in budget-making. It is generally made a duty of public officers in the executive departments to report in writing on subjects relating to the duties of their office when required by the executive. This duty of public officers to report to the executive and the duty of the executive to report to the legislature on conditions in the state or nation and to make recommendations are ample basis for any executive to assume the budget-proposing function without further legislative authority.

A CAUTION

In enforcing arguments to give power to American executives, European experience is frequently used to clinch the point. In deciding what weight to give such experience it ought to be constantly kept in mind that the efficient, the actual executive in countries whose experience is constructively useful, is a group of persons. In America the executive, as the word is used

in the budget discussion, always means a single person. In European governments where the executive power is vested in a single person there is absolutism.

HAS THE EXECUTIVE THE OPPORTUNITY TO PREPARE INTELLIGENT BUDGET PROPOSALS?

While it is conceded that the power of revising the budget proposals of executive departments should be exercised by the executive, the question may be raised as to whether the conditions surrounding executives is favorable to the most intelligent exercise of the budget-revising power by the executive.

A governor is usually elected early in November. On January first or thereabouts he takes office. He is expected immediately to present to the legislature at the beginning of the legislature and from time to time "information on conditions of the state and to make recommendations." The information desired ought to be the basis of the budget proposals, and the recommendations must be made in the light of them. From the time of his election and during the legislature the political exigencies of the situation do not give the governor the opportunity to get the facts about administrative conditions, nor about social conditions intimately related to the administrative conditions upon which budget proposals must be based if they are intelligently prepared. Under present conditions he is practically forced to rely on the knowledge and judgment of some interested persons within the government or on that of some extra legal persons. There is the opportunity for the unseen government. If the governor has had recent legislative or administrative

experience, the danger is not so great but it is still present.

The situation exists in its worst form where the legislature meets early in January, and January first is the beginning of the fiscal year. As the legislature meets, no authority of any governmental bureau, department or commission to continue operation exists under the usual annual or biennial appropriation plan. This is remedied by immediately passing resolutions authorizing departments to continue temporarily under appropriations equal to the old. But this is patch-work, and subjects administrative departments to a legislative influence that is well nigh irresistible. This worst form of the situation is remedied by the continuing appropriation plan outlined in another chapter.

But the specific problem is met by several minor suggestions. Assuming that the governor is to prepare budget proposals, the essential thing is to give him time to " catch his breath " and to get adequate and accurate information. The first suggestion usually made is to shift the fiscal year to July and thereby make it not so imperative that proposals be introduced at once. In the proposed New York constitution this suggestion was combined with the further one that the governor be given until March to submit his budget proposals. This would give him at least some opportunity to get acquainted with the situation. In states with a sixty day or other short limited session there is hardly time for this. It may be added also that there is hardly time in these cases for the genuine consideration of the budget no matter how prepared, and there is every opportunity for every sort of manipulation.

But the most frequent term of a governor [1] just about gives him time to get acquainted with his job when like as not he will fail of reëlection. The present governor of Maryland has pointed out the fact that in the state of Maryland: "There at least need be no fear in my own State of Maryland of any governor becoming a dictator or perpetuating himself in power, for no governor since the Civil War has ever been re-elected in our state." [1] The experience gained by the governor in his two year term cannot be utilized. He cannot very well make proposals when a new governor with new heads of departments must begin all over again. The kaleidoscope of elective public officials of short terms with its bad effects on budget-making will continue so long as we have short terms. The more fundamental remedy is executive officers with longer terms combined with effective machinery for exercising control.

A number of the states have a four year term of office for governor combined with a biennial legislature. This is perhaps the best situation there is in American legislatures for budget-making. But here, as elsewhere, in discussing the American executive one is faced by the difficulty of an executive with a definite term of office without any effective means of control. Perhaps with this last consideration in mind one may regard the present practice of the two year governor with the biennial legislature the best for budget-mak-

[1] Cf. Appendix III.

[1] This quotation is also significant because the Governor of Maryland has also suspicion regarding the autocratic character of the executive budget plan as embodied, for example, in the Maryland amendment.

ing, particularly if, as is sometimes true, there is a presumption that a man will be given a second term if he has been even only moderately successful. The condition in Alabama, with a four year term for governor combined with a quadrennial legislature, is not in the interests of intelligent budget-making. The situation in Massachusetts is not quite so bad even though it is more kaleidoscopic with a one year governor and an annual session of the legislature. A democracy should tend toward the latter situation rather than the former.

In the national government the longer term is combined with frequent meetings of the legislature. The conditions are in general favorable for intelligent budget-making. There is an exception. There is no way of exercising popular control effectively over the executive except through the mid-administration election of members of congress. But this is usually hardly specific enough.[1]

[1] Cf. Bagehot, "English Constitution": "But under a presidential government you can do nothing of the kind. The American government calls itself a government of the supreme people; but at a quick crisis, the time when a sovereign power is most needed, you cannot find the supreme people. You have got a Congress elected for one fixed period, going out perhaps by fixed installments, which cannot be accelerated or retarded — you have a President chosen for a fixed period, and immovable during that period; all the arrangements are for stated times. There is no elastic element, everything is rigid, specified, dated. Come what may, you can quicken nothing and can retard nothing. You have bespoken your government in advance, and whether it suits you or not, whether it works well or works ill, whether it is what you want or not, by law you must keep it. In a country of complex foreign relations it would mostly happen that the first and most critical year of every war would be managed by a peace premier, and the first and most critical years of peace by a war premier. In each case the period of transition would be irrevocably governed by a man selected not for what he was to intro-

The President is elected in November but does not assume office until March fourth and does not have to submit his first message until the following December. The first budget estimates for the new administration are submitted eleven months after the election for a fiscal year beginning July of the following year. While he is getting acquainted he is working under a budget prepared by his predecessor and passed by a preceding legislature, but for three of his four years the conditions of budget-making are eminently satisfactory from the point of view under discussion.

BUDGET PROPOSALS OF ADMINISTRATIVE COMMISSIONS

A great deal of the budget discussion proceeds on the conventional distinction between legislative, executive and judicial. It is assumed that the principal, if not the sole problem of budget-making, concerns the executive department. And this assumption is nowhere more patent than in the discussion of the budget proposals. This chapter has proceeded this far in accord with the present assumption. It is now necessary to challenge this assumption in one particular at least; it will be necessary to sharply distinguish between the new administrative commissions and the operating departments of government, properly called executive. To these latter the preceding discussion of this chapter properly applies. Does it apply to the administrative commission?

The budget problem presented by the administrative

duce, but what he has to change — for the policy he was to abandon, not for the policy he was to administer."

commission may be suggested by a series of questions: Is the Interstate Commerce Commission, for example, an executive department of the federal government for the purposes of budget-making? Is the Wisconsin Railroad Commission an executive department of the state government of Wisconsin for the purposes of budget-making?

Or putting the question in terms of this discussion: Shall the executive revise the estimates of administrative commissions? Or more particularly, shall the President of the United States in a national budget system review the estimates of the Interstate Commerce Commission? And so the question might be framed specifically for every state where there is a genuine administrative commission, public utility, industrial or marketing.

The answer to these questions will depend on the relation of the administrative commission to the executive. In the national government it is not presumed that the relation of the President to the Interstate Commerce Commission is the same as his relation to the War Department. A disagreement with the Secretary of War on an important question is naturally followed by the resignation of the Secretary, as for example in the case of Secretary of War Lindley Garrison. But suppose the President were interested in any of the rate cases recently before the Interstate Commerce Commission, and in his judgment it was wise for any reason satisfactory to himself that such increase ought to be granted. He calls in the Commission, expresses his judgment and intimates that such a decision is expected. The duty of the members of the Interstate

Commerce Commission would be to rebuke the President for an unwarranted interference in their prerogatives, and public condemnation would be visited upon him for a usurpation of power.

And practically the same distinction is made in the states between the administrative commission and the operating department of government.

The reason for this differentiation is that the duties of these commissions are primarily legislative or quasi-legislative and judicial, and only incidentally, if at all, executive. The administrative commission is, in fact, a court. It may be called an economic court instead of a judicial one, for its lawyers are economists and its principal interest economic facts rather than legal precedent. But these differences do not change its essential function: judicial. And so the case for the executive revision of the estimates of administrative commissions is no stronger than the case for the executive revision of the estimates of the courts — in other words, there is no case at all.

Moreover, commissions are a supplementary legislative agency. They are the means the legislature has designated for a more specific determination of the law within the limits set by the legislature. The legislature says to these commissions in substance: "Take what is at least a quasi-legislative duty. We declare that rates must be reasonable; determine in individual cases what is a reasonable rate for we have no means of doing that. Enforce your determinations by orders and have them executed. In any disputes we shall make your findings prima facie evidence of the facts, and give your determinations the status of determina-

tion by a court of first instance." The revision of the estimates or recommendations of such a body cannot very well be vested in the executive. This is not part of his work or duties. The form in which the estimates shall go to the legislature must be determined by the commission, and the legislative control is thereby direct.

The primary relationship is of administrative commission to the legislature. The injection of the executive in the budget-making phase of that relationship would practically destroy it. The account of stewardship of the administrative commission is to the legislature direct.[1]

The procedure that will be followed, therefore, in connection with the preparation of the budget proposals of administrative commissions will be as follows: the proposals will be prepared in the first instance by the various bureaus of the commission, and these will be reviewed by the commission itself and prepared in final form for the legislature. The proposals as thus prepared will be sent to the executive who will then transmit them without revision to the legislature along with the executive proposals.

[1] This proposal of a direct relationship between the administrative commission and the legislature must not be misunderstood as a desire or an effort to release these agencies from control. The explanation of the present ineffectiveness of these commissions is that they are not subject to any real control. Though this is not our present problem, the methods of control may be indicated briefly as follows as regards personnel: (1) trial on charges before governor, (2) impeachment, (3) interpolation and vote of lack of confidence by legislature, and (4) recall by the electorate; and as regards the work of the commission: (1) through further legislative action regarding duties or procedure, and (2) through the budget as indicated in subsequent chapters.

WHO SHALL DETERMINE THE REVENUE PROGRAM?

Who shall determine the revenue program?

It is urged that the finance officer of the administration should be made responsible for facts about revenue and for the revenue program. Perhaps and perhaps not. Look back for a minute at the budget problem as it confronts the administration.

The departments prepare estimates based largely on the experience of the department of the past year and on certain prospective facts of the next year, e. g., an increase in population. The department proposes in its estimates for the continuance of established services, increase or decrease of these services and the organization of new services. Each bureau or subdivision wants as much as it can get to do as much as it can. This expansion is perfectly natural. The highest administrative officer talks the service over with each bureau head individually and in general conference. He attempts some sort of an equilibrium among the subdivisions, but his view and theirs are largely departmental.

The estimates are transmitted to the executive. He knows something about departmental conditions, but nothing very definitely. That also is natural. But he is not to view the estimates from that point of view primarily at all. He presumably knows the various and many needs of the state or nation, and his primary function is to review the estimates in the light of these needs.

But he is required to do more. He must view departmental estimates and national or state needs in the

light of the financial resources of the nation or state. This coördination is the duty of the executive. The financial officer as the person most intimately acquainted with the revenue-producing power of the state on the basis of the existing system must advise the executive along these lines, but he must advise him, too, as to new sources or increased sources of revenue. In other words, the head of the finance department has with reference to the budget exactly the same duties as other department heads.

Take the case of an executive who wishes to propose a state program that will cost more than the existing revenue measures are likely to produce during the fiscal period of the program. The fiscal officer is called on for suggestions. Let it be supposed that he recommends a land tax, an increased income tax, a higher automobile license tax, a tariff on wool or sugar, or an inheritance tax. In deciding upon which shall be recommended the revenue-producing qualities of these taxes are not the only consideration. Their effects on public welfare are not less important. It is to the executive that we assign the function of expressing in the first instance this public welfare point of view, just as it is the function of the legislature to express it finally.[1]

[1] This book does not attempt to deal with the many problems of the revenue side of budget-making. But the reader must constantly keep in mind the revenue side of budget-making.

CHAPTER V

THE BUDGET AND THE ADMINISTRATION

THE legislature must define its policy toward the administration as well as its substantive public policies. So far as the relation of the legislature to the budget is ever discussed, it is the latter that receives attention, hardly ever the former. It is felt that in order to focus attention on these problems they should have separate treatment. The subject-matter of this chapter is, therefore, the definition of legislative policy toward the administration.

Perhaps the two most significant facts about appropriation acts as they relate to the legislative attitude toward the administration are their annual or biennial passage and their detailed or lump sum character. The latter fact raises the collateral question of the veto of items by the governor, but that is not strictly pertinent to the subject-matter of this chapter and will not be discussed here.

For purposes of a study of the budget or of fiscal policy, the separation of the administration from the executive, particularly of his policy-making functions, is in the interest of clearness, of a more accurate statement and of a more ready understanding. By the administration is understood here the operating agencies of government, or if the reader will understand the term without any insidious meaning, the bureaucracy

— the men who do the day-to-day work of government. The executive, as he is merely a part of the great governmental machine to carry out the public will, is merged in the administration as here understood, but as he is a part of the policy-declaring function which the administration carries into effect, he is reserved for separate treatment.

I. EFFICIENCY OF ADMINISTRATION

Perhaps one of the greatest problems of our government is increased efficiency of administration — and yet we hardly think of efficiency as related to administration. The too familiar campaign cry of economy and efficiency has usually merely a pre-election purpose. It is a talisman for the crowds. It is a catchword. It is a shibboleth. And yet efficiency of administration is as important as efficiency in registering the public will. Much talk there is — and ought to be — about simpler and more effective means of registering of the public will through appropriate measures, but who asks how effectively or even how well this expressed public will will be carried into effect? Let us look at the problem.

Legislatures declare certain public policies in our laws. Whether these policies shall be operative is the problem of administration. All the laws in the world remain merely as good intentions, as aspirations, as pious wishes unless they are enforced. Or as Charles Evans Hughes puts it: "For all laws and programs are vain without efficient and impartial administration." [1] The function of the administrative agencies

[1] Telegram to Chicago Convention, June, 1916, accepting Republican nomination for President.

of government is law enforcement. Whether we shall have merely a paper government or an actual government depends on the efficiency of administrative officers. Setting the machine is the most important thing if it is in good working order, is well oiled and is attended by trained workmen. But suppose that the machine is set and there are no workmen or the parts of the machine are worn out, or that the oil for lubricating is used up. What then? Operation and maintenance then become the fundamental problems, and the setting of the machine is of no avail. In government, administration is complementary to legislation and determines its effectiveness. Hence the importance of good administration.

How does the budget affect administrative efficiency?

A budget act may through its continuing character establish a presumption of a department's permanence, encourage planning ahead over a series of years, or it may make administrative officers men who do their work from day to day and cross bridges only when they come to them. Shall we have a plan for a series of years and shall we encourage through the budget the formulation of such plans? The question of annual appropriations is intimately related to an answer to this question.

Or again, shall we through the form of the appropriation act make possible the exercise of administrative discretion, or shall we make administrative officers automatons, carrying out a specific detailed direction as to what personal service or equipment or printing is required to carry out the functions of the department? This is the problem of the so-called segregated budget.

To these problems the immediately succeeding pages attempt a solution.

II. GOOD ADMINISTRATION AND CONTINUING APPROPRIATIONS

Annual Appropriations

"It was on the 31st of October that the charwoman and the rest of the mechanical force which manage the Capitol building in Washington were given their pay for the month of June."

In turning over some old numbers of *Collier's Weekly* this 1913 item jumped from the page, for it fitted snugly into the discussion of annual appropriations. It was not so much the picture of poor men and women waiting four months for their pay, as it was the running of our national affairs. And why did such a thing happen? The item continues: "This was because the regular appropriation had been exhausted, and an urgent deficiency bill had not been passed." The incident could properly and pertinently be made the basis of discussion of government by deficit, or inefficiency in government, or of our *cataclysmic theory and practice of administration.* The immediate concern is with the last.

The effect of such a system of government on the charwoman is important — and equally important is its effect on all the higher officials involved. But of vastly more importance is the view of government that lies revealed in it. The government is merely a temporary thing to be provided for on a hand-to-mouth basis. If we as a people were introspective enough

and analytic enough, we should state our situation frankly somewhat as follows: "The government will get along somehow without very much foresight or planning. If we can keep it financed a year ahead, all is well. We do get along somehow. If government officers, including charwomen, are delayed a few months every few years for their salaries, it is a minor matter. They wait. Many of them could not get other jobs anyway. As to keeping the administration of affairs going, we can always patch it up with a deficiency appropriation until we are ready to pass the regular appropriations. Moreover this annual or biennial uncertainty as to funds keeps the public officials on the anxious seat and amenable to control by the representatives of the people and prevents the development of a bureaucracy."

And so we have the cataclysmic theory of administration embodied in our annual appropriation system. At the end of the fiscal year the wheels of government ought legally to stop unless the legislature — national or state — has passed the annual appropriation bills. Then we may begin again, and so on forevermore. We create a department of health. We know it is to be permanent, but we provide for it merely for a year, when it continues again only by positive action by the legislature. There must be an annual resurrection. It must get into the legislative game if it is to have another lease on life. *The nine lives of a cat are as nothing compared to the lives of our administrative departments.* What are referred to here are not governmental agencies of a temporary or experimental character, but the permanent administrative services.

Nor is any such analysis of the situation merely mental. If there is anything the American democracy is supposed to believe in whole-heartedly it is education. We have come to accept higher education by the state as a matter of course, too. But let us see what may sometimes happen — and does. The University of Texas was to all intents and purposes a part of the permanent administration of the state of Texas. Both houses of the Texas legislature in the session of 1913 passed by very large votes appropriations for the University as follows: $658,000 for 1913–14 and approximately $700,000 for 1914–15. This second item was vetoed by the Governor in its entirety, the reason given being that it was not itemized and he had no option in dealing with an excessive item other than by a veto. So far as the law-making agencies of the state were concerned, the University of Texas was without funds — surely without adequate funds — during the year 1914–15, and the normal result would be the closing of the University for that year.

Does any one suppose that the people of Texas wanted the University to be discontinued for a year, or to have its great plant lie idle for a year? Does any one suppose that the people of Texas wanted to delay the education of their sons and daughters for a year? No, the responsibility is in the system of annual appropriations. Nor is this an isolated case. The Universities of Oklahoma, Oregon and Utah have had in effect similar experiences, that is failure of annual appropriation bills. But perhaps some clue to a remedy for the situation may be revealed by the Texas solution of its difficulty:

A person intimately acquainted with the situation states it very definitely in a private letter in these words:

"In addition to the appropriations, out of the general revenues of the state, the legislature also, as it does automatically each two years, appropriated for the uses of the university the rentals from its lands, interest on its bonds, and the various fees it collects which amount to something like $200,000 for each year. The authorities of the university, in the emergency which arose, saved up practically the whole of the resources last mentioned coming to it in the form of rentals, interest and fees for the year 1913–14, added to it similar resources for the year 1914–15, and by that means found it possible to keep in operation until March, 1915. These funds for some years have been expended almost in their entirety for buildings and for permanent improvements, and such needs of the university had to be neglected during the period mentioned. The authorities of the University reported to the legislature that convened in January, 1915, that it could not continue in operation after March of that year unless an emergency appropriation of some two hundred and fifty or sixty thousand dollars should be provided. This appeal was responded to and the appropriation made, thus enabling the institution to complete that scholastic year."

How the System Operates

A real insight into the system of annual appropriations may be secured by an exposition of the character of the legislative manipulation that is made possible under it. A state department, let us say, of health or of education is created. The need for the service of such a department is continuous, and the department is presumably permanent. It is, however, to be financed from year to year. It gets its appropriation for the second year and the third. But the enforcement of its

law has been vigorous, and certain interests are opposed to it, or for some other reason there is opposition. Whatever the cause in a particular case is immaterial in our present consideration. Nor is it pertinent that the proposed appropriation is an increase or a decrease over last year's appropriation or equal in amount.

If this opposition won enough senators or members of the lower house, it could prevent passage of any legislative appropriation and hence kill the department through starvation. Let us see how many votes would be necesssary. We will take the Wisconsin legislature as an example. There are one hundred assemblymen. If all were present fifty-one assemblymen could starve the department against any opposition by the remaining forty-nine assemblymen, all the senators and the governor. But very rarely are all the assemblymen present. Toward the closing days of the session, i. e., when appropriation bills come up, it is frequently true that only the necessary three-fifths are present. In that case the vote of thirty-one assemblymen is necessary to prevent any action and thus starve the department to death. Though three-fifths quorum is necessary to pass a bill, a majority quorum is sufficient to kill it, and in that case twenty-six votes are necessary instead of thirty-one.

A similar situation might exist in the Senate. The Wisconsin Senate is made up of thirty-three members. With full attendance seventeen senators are necessary to obstruct the measure and starve the department, even though the other senators and one hundred assemblymen and the governor may be in favor of it. With the minimum attendance required for appropriation bills,

namely, twenty senators, a vote of eleven senators can secure the same results. And if only a majority is present, the bill can be killed by a vote of nine senators.

With minimum attendance in the assembly, a combination of the governor and thirty-four assemblymen or with similar attendance in the Senate, a combination of governor and twelve senators can effectively starve any department by a veto.

With minimum attendance in the assembly, a combination of the governor and seventeen assemblymen or with similar attendance in the senate, a combination of governor and seven senators can effectively starve any department by means of a veto under the annual or biennial system which is the usual system in this country.

In the last days of the session the governor alone can starve a department through the pocket veto.

In those states where the provision for passing legislation or overriding a veto is stated in terms of "all the members elected," and this is true in many states, every absentee contributes to the ease with which appropriations are defeated and departments "hamstrung" under the annual appropriation plan. Under a system of continuing appropriations such absentees become a force in preventing the starvation of departments through minority control.

The Annual vs. Continuing Appropriations

Walter Bagehot in 1867 prophesied that some day the Americans would probably to some extent modify their present system of total administrative cataclysms.

(The English Constitution, p. 259.) They have. Civil service reform has helped to make these transitions milder. But the effective agency to do this is through continuing appropriations.

The assumption of the cataclysmic theory or practice of administration is that government shall every so often stop until the legislature gets around to passing an appropriation bill for the department or service. The continuing appropriation assumes that the major services of government are comparatively permanent, and the presumption is that they will continue so. Thus under an annual or biennial system of appropriation — which accepts the cataclysmic point of view — the appropriation is made for a year or two and stops at the end of the period. Then failure to act by the legislature becomes in effect an abolition of the service. But more than that, it makes it practically a necessity for administrative officers to get into the legislative game to the total neglect of their administrative duties during the session of the legislature not to protect their salaries but to protect the very existence of the governmental department. And in addition to that, they are subject to all kinds of legislative pressure which becomes more effective as the end of the fiscal year approaches and becomes practically a command after it has passed. The influence extends both to appointment and discharge of personnel and to the enforcement of the law entrusted to the governmental agency involved.

Under a system of continuing appropriations the appropriation continues until changed. Then only *positive* action by the legislature can affect or modify it

in any way. The basis of this is: that just as a majority of both houses of the legislature and the governor, or two-thirds of the members of the legislature (i. e., the number to override a veto) are necessary to pass it, so only by similar action should it be modified or abolished. The burden of proof for changes in established law or organization has shifted from the administration to the legislature, and changes can be effected only by positive action of the law-making agencies. The administrator, therefore, is reasonably safe and he may continue to perform his administrative duties instead of cajoling and jollying legislators in the lobby of the hotels of the capital city or in the lobby of the legislature. Moreover legislative pressure is not likely to be so effective because the source of its momentum is gone and particularly minority control is ineffective.

Temporary and Experimental Agencies and Continuing Appropriations

The system of continuing appropriations assumes, as already explained, a radically different point of view toward the administration than the system of annual appropriations. Once the legislature has declared a policy and provided for the organization to carry it into effect, the policy ought to continue until the legislature wants to change it, and to change it not by default but by positive action. That is, the continuity of the administration ought to be presumed.

But two questions are frequently raised. One is: "Would you put all governmental services on a continuing basis?" The answer is, "No." Insofar as

any department is experimental or organized to meet a temporary need, it would not be put on a permanent basis, An illustration will help. The 1911 Wisconsin legislature felt the need for an agency which would study the economic and social problems of the state and begin an accounting reconstruction that would look toward a real budget system. But it was not sure that it wanted to create a permanent organization of that kind, or rather it felt that it did not know exactly the field for such an organization. The 1911 legislature therefore passed a bill creating a Board of Public Affairs with a vague but broad definition of its power and provided for its continuance for two years. The 1913 legislature modified its powers somewhat and continued it until January 1, 1916. But in the meantime the 1915 legislature passed a law restricting its power entirely to its budgetary and accounting aspects and continued it until 1917. This is the way a state with practically 90 per cent. of its appropriations on a continuing basis deals with its temporary experimental agencies. The 1917 legislature placed it on a permanent basis by granting it a continuing appropriation.

Nor is the case any different when the temporary emergency or experimental work is part of the work of a department already on a continuing basis.

The Wisconsin State Board of Health is a permanent agency. It is an accepted part of the state administrative machinery. Its general work is on the basis of continuing appropriations. Its appropriation is made in section 172–27 of the Wisconsin statutes. This section has ten subdivisions, but only those illustrating

different forms of appropriation acts will be quoted.

For its general powers, the appropriation runs in this form:

"There is appropriated on July 1, 1915, thirty-five thousand dollars and annually beginning July 1, 1916, thirty-five thousand dollars, payable from any moneys in the general fund not otherwise appropriated, to the state board of health to carry into effect the powers, duties and functions provided by law for said board." (Sec. 172–27 (5).)

For some of its special powers the appropriations are in this form:

"There is annually appropriated on July first, fifteen hundred dollars, payable from any moneys in the general fund, not otherwise appropriated, for the state board of health and vital statistics, to carry out the provisions of section 1409a–1." (Sec. 172-27 (1).)

"All moneys received by the state board of health for the licensing of plumbers shall be paid within one week of their receipt into the general fund of the state treasury and all such moneys are appropriated to the state board of health to carry into effect the provisions of sections 959–53 to 959–58, inclusive, of the statutes." (Sec. 172–27 (2).)

For a definite piece of work, a water survey, a conditional appropriation is made in this form:

"There is appropriated on July 1, 1913, three thousand dollars, payable from any moneys in the general fund, not otherwise appropriated, for the state board of health for the purpose of making a water survey as required by section 1407m, provided that an equal sum can be obtained by and through the department of the United States geological survey for this work." (Sec. 172–27 (3).)

For emergency purposes an appropriation is made in this form:

"There is appropriated on July 1, 1915, seven thousand five hundred dollars, payable from any moneys in the general fund not otherwise appropriated to be used upon special authorization by the governor and the attorney-general as a contingent emergency fund for checking or preventing threatened epidemics of transmissible diseases." (Sec. 172–27 (7).)

Annual Review and Continuing Appropriations

But the second question in the minds of most people interested in the budget problem is regarded as fundamental and conclusive as regarding the system of continuing appropriations. It is: *"How is it possible to provide annual legislative review of administrative acts with a system of continuing appropriations?"* The question is often asked in another way: "Under the system of continuing appropriations do you not make the administration independent of the legislature and thus stimulate the growth of a bureaucracy?" This is, in reality, the same question. The first formulation of it looks at the problem from the standpoint of means — legislative review of administration; the second looks at the problem from the standpoint of end, viz., development of bureaucracy.

It is found that there is underlying this question a fundamental misconception of continuing appropriations. Perhaps this confusion is due to the fact that sometimes these appropriations are referred to as permanent appropriations. *A continuing appropriation is not permanent.* It continues in its existing form only

until a legislature changes it. Continuing appropriations in Wisconsin, for example, are in many instances changed biennially. Their essential virtue is that they continue until the law-making agencies have actually determined upon a change and positively expressed it. No failure to act because of the obstructionist tactics of any group in either house of the legislature or of the combination of an executive and a minority in either house can prevent the continuance of a department of bureau. But at the time the law-making power wishes to increase, decrease or abolish any continuing appropriation it simply does so just as it amends or repeals any other law.

The Budget Procedure for Continuing Appropriations

Departments or governmental agencies which are financed by continuing appropriations should submit their budget estimates to the executive to be reviewed by him exactly as annual appropriations are. This is the practice in Wisconsin. This is obviously the practice that must be followed everywhere under any budget system which aims to base legislative action upon the fullest administrative information. In order that the executive may make intelligent recommendations and that the legislature may decide whether it wants to increase, decrease or leave unchanged the existing appropriations, this information must be submitted for each fiscal period. Each time the legislature must answer for each continuing appropriation these questions: Shall this appropriation continue at this amount? Shall it be increased? Shall it be decreased? If it decides that it shall continue, no action

need be taken. If it wishes to change the appropriation in any way, it must take appropriate action by the positive use of the law-making machinery. The periodical review of *all* governmental activities is a necessary preliminary to the performance of the legislative duty of answering the three questions mentioned immediately above.

A very serious danger to continuing appropriations, and to other appropriations for that matter, is the single or large bill including many heterogeneous items which are passed on a single roll call or on a single vote. Each change ought to be voted on individually before the bill is voted on as a whole, otherwise you encourage and stimulate log-rolling, and break down the guarantees of continuing appropriations.

III. ADMINISTRATIVE EFFICIENCY AND SEGREGATED APPROPRIATIONS

In rendering an account of its financial stewardship, the administration accounts in great detail for all the money appropriated to it and expended. To be effective this account must include not merely the things that were purchased for the money — personal services, supplies and the like — but the things done, milk inspection, prevention or confinement of typhoid epidemics. Along with this should go larger social facts such as the death rates and the birth rates, and the like. In order that the legislature shall decide upon social policies and appropriations intelligently, it is necessary that it shall have the fullest and most detailed information so that past experience may be utilized in meeting present and prospective needs.

Shall the legislature in giving the administrative officers their "sailing orders" prescribe in very great detail how the administrative officers shall spend the public money? This question gives rise to the problem of the "segregated budget."

What are "Segregated Appropriations"?

This is frequently referred to as the problem of the "segregated budget." This is a misnomer. The budget [1] as a document of information intended for the legislature should be as detailed as possible. The more detailed, the more information there is potentially if properly organized and classified. There could be hardly any objection to a segregated, i. e., a detailed budget if we understand by "budget" the budget proposals.

But in New York City, from whence the budget propaganda has been carried, the segregated budget proposals became the basis in its segregated form for the appropriation ordinance. It is obvious that the appropriation ordinance need not follow in form the budget proposal. It may be even more detailed or it may be more generalized. It is a question as to the detail the legislature wishes to prescribe for the administrative use of authorizations to spend. This is a problem not so much of a so-called "segregated budget" as of a "segregated appropriation act."

The "segregated budget act" is contrasted with the "lump-sum budget act." The legislature may say in substance, "Mr. Administrator, we give you $———— for the administration of health." Or it may say, as

[1] I. e., the budget proposals.

New York City did say in 1913, "Mr. Administrator, we give you $——— for the administration of health laws to be spent as follows:

DEPARTMENT OF HEALTH[1]

ADMINISTRATION

Executive—	
Commissioner	$7,500 00
Sec'y to President	3,000 00
Examiner	3,000 00
Medical Inspector	2,550 00
Sten. to President	1,200 00
Sten. and Typewriter	1,050 00
Messenger, 2 at $1,500	3,000 00
Secretary	5,000 00
Chief Clerk	3,500 00
Clerk	3,000 00
Clerk, 4 at $2,550 .	10,200 00
Clerk	2,100 00
Clerk, 2 at $1,500 .	3,000 00
Clerk, 4 at $1,200 .	4,800 00
Clerk	750 00
Clerk	600 00
Clerk, 2 at $540 ..	1,080 00
Clerk, 8 at $480 ..	3,840 00
Clerk, 5 at $300 ..	1,500 00
Sten. and Typewriter	1,200 00
Sten. and Typewriter	900 00
Sten. and Typewriter	750 00
Sten. and Typewriter .....$	600 00
Typewriting Copyist, 2 at $750 ...	1,500 00
Typewriting Copyist, 3 at $600 ...	1,800 00
Laborer	720 00
Telephone Operator, 6 at $900 ...	5,400 00
Telephone Operator	750 00
	$74,290 00
Audit and Accounts—	
Clerk	$2,400 00
Clerk, 3 at $1,800 .	5,400 00
Clerk, 3 at $1,500.	4,500 00
Clerk, 3 at $ 900.	2,700 00
Clerk	480 00
Bookkeeper, 5 at $1,200	6,000 00
Laboratory Assistant	900 00
Laboratory Assistant	750 00
	$23,130 00

And so on through endless items of this kind classified under various heads.

It is required by the legislature that each amount of money shall be used only for the purpose definitely named, and for no other purpose.

[1] New York City Budget, 1913, pp. 396–397.

An appropriation presented according to the first form is said to be a "lump sum" appropriation. The money is authorized to be spent by the administrator under certain large headings, and the relative amount that shall be spent for the subordinate headings (as given in the budget proposals) is largely a matter of administrative discretion, though they express the *probable* method of spending.

An appropriation presented according to the second form is said to be segregated. For each of the details of the larger headings a specific appropriation is made. Each is segregated from the rest and is regarded as distinct. There is no administrative discretion.

The Development of a "Segregated Budget"

Wide currency was given to the phrase and the thing by the New York Bureau of Municipal Research. When it began its work the cities were regarded as the governmental failure of America. The "shame of the cities" was told and was accepted as a matter of course. A condition confronted the municipal researchers which called for an immediate remedy. Public funds were the spoils of partisan victories by all parties besides Tammany. Padded pay rolls in September and October were to be accepted. Public franchises, public offices, public contracts were the pawns in the political game. One of the chiefs of Tammany Hall announced the principle that the first consideration was "my pocket every time." A budget procedure, as we now think of it, was unknown. Money was voted; and how much, for what purposes and to whom, could be ascertained, but it was not very clear to the public.

"Budget-making was merely a compromise between the compelling exigencies of work, or the political or personal persuasiveness of those making requests, and the political inexpediency of increasing too rapidly the city's annual outlays." [1] When the public really began to see what had been happening, they wanted some control exercised over these administrative officers. As abuses were exposed, the grantors of funds increased the conditions of appropriations until in 1913 there were twenty-four conditions to control the use of appropriations. There was thus developed what has been most aptly called a "meticulously detailed appropriation ordinance." [2] The appropriating authorities demanded from the administrative authorities very detailed information — meticulously detailed information — and upon acceptance made these detailed requests the "meticulously detailed appropriation ordinance."

The Results in New York City

Wherever young men from the Bureau of Municipal Research went, there the gospel of segregation followed. Wherever surveys were made by the Bureau, a segregated budget was an inevitable recommendation. The bulletin service and other publicity methods of the Bureau carried the segregation propaganda practically everywhere in the country. With the return of Frederick A. Cleveland to the Bureau staff there was a distinct reversal of the segregation policy.

[1] "The Budget as an Administrative Program," by Henry Bruere, in *Annals of the American Academy of Political and Social Science,* November, 1915, p. 178.

[2] *Ibid.*

In New York City an effort was made to educate the authorities away from the segregated budget. They realized the situation. They said that the purpose of the segregated budget had been accomplished and a change was necessary for administrative efficiency. Perhaps a word may be permitted in this connection as to the purposes and results of the segregated budget in New York City.

The purpose of the segregated budget has been aptly put by Henry Bruere, who was himself an important factor in the whole development. He says:

"It was conceived not by those responsible for granting funds. It was prompted not so much by the desire to expedite the performance of public business, as to prevent age-long and conspicuous misuse of public funds which under lax organization and ineffective administration had become characteristic in New York as in other American cities. The purpose of the new budget method was in theory a negative purpose; that is to say, it was inhibitory rather than directive." ("The Budget as an Administrative Program," by Henry Bruere, in "Annals of the American Academy of Political and Social Science," November, 1915, p. 180.)

The results he summarizes succinctly in these words:

"Segregation results in a degree of regimentation which restricts and in a measure paralyzes the freedom with which the organization provided in the appropriations may be employed, or the funds for purchases may be utilized." (Ibid, p. 181.)

The Function of the "Segregated Budget"

The New York experience with the segregated budget has shown clearly its usefulness. Wherever

public funds are not safeguarded or politics is the controlling influence in administration, or in short, wherever there is corruption, or graft or laxness, there the segregated budget serves as an effective means of control. It is a negative influence. It leaves no room for administrative discretion. It ties the hands of administrative officers. It prescribes exactly how the money shall be spent.

But to build a budgetary system on a pathological condition is hardly wise. Frederick A. Cleveland puts the case well:

> "The best that may be said for the detailed (i. e., segregated) appropriations of the past is that they are a part of a system that has operated to prevent administrative action premised on infidelity and ignorance; that legislative control over administration through detail appropriations is a device for use of a political institution, in which all the elements essential to administrative efficiency are lacking." (Detail vs. Lump-Fund Appropriations, by Frederick A. Cleveland, 1913.)

To prevent graft or waste of public funds due either to dishonesty or inefficiency or any other cause, the segregated budget serves a useful purpose. It is only an emergency measure. It stops the gaps. It helps prevent abuses of every kind while preventing others. It substitutes legislative control for executive responsibility to the legislature for things done.

Accountants or persons inoculated with the accounting point of view coming face to face with the chaos of series of unrelated items of appropriations in large sums suggested the segregated budget. It made the bookkeeping so much simpler. It was the obvious

thing to do — until a modern system of accounting made possible accurate detailed information from the point of view of the administrator, of the legislator and of the public in terms not merely of gross sums, but of unit costs. *Assuming the honesty of public officials, a good accounting system will serve all the purposes that are served by the segregated budget.* The segregated budget is usually a wall put up to permit government to build behind it an efficient accounting system.

Some By-Products of the Segregated Budget

But in achieving the negative results it aims at, the segregated budget does more. It ties the administrator hand and foot. It makes him an automaton registering petty legislative decisions. He need not do what the legislature says he may do, but if he does anything he must carry out the detailed direction of the legislature. Let us look at the 1913 budget for New York City — that logical expression of the segregated budget. The budget is for almost $200,000,000. It contains items as follows:

Education
  Wages, Temporary Employees
    Bureau of Buildings, Division of Repairs
      Machinist at $4.50 per day (1 day).....$4 50
N. Y. County Sheriff
  Communication
    Telegraph, Cable and Messenger Service
      Administration 2 00

"Segregated Budget" and Lump Sum Appropriations

Should a legislative body prescribe in such detail the expenditures of public money? Perhaps there should

be such control. Let us see another way of approaching the problem. Take, for example, the departmental estimates of the Industrial Commission of Wisconsin as presented to the 1915 legislature.[1]

Description	Department[2] Estimates	
	1915–1916	1916–1917
GENERAL ADMINISTRATION	$48,624.00	$48,624.00
Salaries and Wages		
Commissioners and Secretary	17,500.00	17,500.00
Clerks and Stenographers	14,000.00	14,000.00
Statistical Employees	6,200.00	6,200.00
Traveling and Field Expenses	2,500.00	2,500.00
Stationery and Office Supplies	2,500.00	2,500.00
Postage	3,500.00	3,500.00
Telephone and Telegraph	500.00	500.00
Express, Freight and Drayage	250.00	250.00
Printing and Binding Reports	600.00	600.00
Sundry Supplies and Expense	400.00	400.00
Books and Subscriptions	150.00	150.00
Rent	504.00	504.00
Repairs	10.00	10.00
Light	10.00	10.00
SAFETY AND SANITATION	23,300.00	23,300.00
Salaries and Wages		
Deputies, Clerks and Stenographers	17,100.00	17,100.00
Traveling and Field Expenses	4,500.00	4,500.00
Printing and Binding Reports	1,500.00	1,500.00
Sundry Supplies and Expense		
Photographs, Blue Prints	200.00	200.00
FREE EMPLOYMENT		
General, etc.	1,600.00	1,600.00

Similar details are given under "Free Employ-

[1] Wisconsin State Budget, 1915, p. 140.

[2] The comparative data for 1911–12, 1912–13, and 1913–1914 are omitted because they are not relevant to our present purpose.

ment," "Woman and child Labor," "Truancy," "Workmen's Compensation," "Bakeries and Confectioneries," "Minimum Wage for Women and Children," "Sweat Shops," "Arbitration," "Investigations," "Apprenticeship," "Private Employment Agencies," "Street Trades," and "Furniture and Furnishings." The situation with reference to the appropriation was summarized as follows:

Description	Department Estimate	
	1915–1916	1916–1917
Appropriation available July 1	$120,000.00	$120,000.00
Unexpended balance previous year	19,097.96	19,163.96
Total available for year	139,097.96	139,163.96
Actual expenditures and estimates	119,934.00	119,934.00
Unexpended balance, June 30	19,163.96	19,229.96

(Wisconsin State Budget, 1915, p. 145.)

The legislature voted the appropriation in this form:

"(Sec. 172–15) 1. There is appropriated, on July 1, 1915, seventy-seven thousand one hundred seventy-eight dollars and sixty-nine cents and annually beginning July 1, 1916, one hundred five thousand seven hundred fifty dollars payable from any moneys in the general fund not otherwise appropriated, for the industrial commission to carry into effect the powers, duties and functions provided by law for said commission.

"2. There is annually appropriated beginning July 1, 1913, such sums as may be necessary, payable from any moneys in the general fund not otherwise appropriated, for the industrial commission to cover the cost of printing and distributing the Wisconsin blue book, required by law to be prepared by the industrial commission.

"3. All moneys received by each and every person for or in behalf of the industrial commission under subdivision (12) of section 2394–52, shall be paid into the state treasury within one week of receipt, and all such deposits are appropriated for said commission to carry into effect the provisions of said subdivision.

"4. All moneys received by each and every person for or in behalf of the industrial commission under sections 2394–82 to 2394–95, inclusive, shall be paid into the state treasury within one week of receipt, and all such deposits are appropriated for said commission to carry into effect the provisions of said sections.

"5. There is annually appropriated, beginning July 1, 1915, three thousand five hundred dollars, payable from any moneys in the general fund not otherwise appropriated, for the industrial commission to carry out the provisions of sections 2377–2387, inclusive, of the statutes.

"6. There is annually appropriated, beginning July 1, 1915, two thousand four hundred dollars, payable from any moneys in the general fund not otherwise appropriated, for the industrial commission to carry out the provisions of sections 1729–1 to 1729s–12, inclusive, of the statutes.

"7. There is annually appropriated, beginning July 1, 1915, five thousand dollars, payable from any moneys in the general fund not otherwise appropriated, as a contingent appropriation for the industrial commission to carry into effect the powers, duties and functions of said commission." (Wisconsin Statutes, 1915.)

Does the legislature have control over the expenditures of the Commission? In the normal run of things the budget estimates control the expenditure of money, and departmental officers are required to explain departures from these estimates. The responsibility is clearly placed on them. It is customary in submitting departmental estimates to give brief written explanations of important differences between expenditures

and estimates. But this is only preliminary to the specific inquiries of the Finance Committee about all aspects of the subject.

To make this responsibility of administrative officers effective the legislature ought to provide specifically for a procedure to question administrative officers in a committee of the whole house. A subsequent vote of lack of confidence would cause the retirement of the political officer charged with the administration of the department. This would not affect the permanent administrative experts.

If there is not responsibility to the legislature either in this way or in some other way, then the legislature is justified in making its appropriations more detailed.

The Lump Sum Appropriation [1]

The essential feature of the lump sum appropriation is that the authorized expenditures are stated in comparatively large sums for rather general purposes. The question as to how the purposes shall be classified is not pertinent to the present inquiry. From the standpoint of the administrator the essential point is that there is opportunity for administrative discretion.

The lump sum appropriation may be expressed under various classifications with various degrees of

[1] "When administrators have developed the means whereby they may think and act intelligently, then it is, and not till then, that detailed appropriations and the other limitations imposed as an incident to the exercise of legislative control over the details of administration may be supplanted by a system of lump-fund appropriations based on a segregated budget for every line of which the executive will assume responsibility." (Detailed vs. Lump-Fund Appropriations, by Frederick A. Cleveland, 1913.)

"lumpness." For example, the appropriation for operation for an Industrial Commission may be expressed in various ways which still retains its lump character.

Form 1

A General Lump Sum Appropriation

For the Industrial Commission .....

Form 2

A Lump Sum Appropriation for Operation for the Industrial Commission by Function[1]

Industrial Commission	
General Administration	$0000000
Safety and Sanitation	000000
Free Employment	00000
Women and Child Labor	00000
Truancy	00000
Workmen's Compensation	00000

Form 3

A Lump Sum Appropriation for Operation for the Industrial Commission by Objects of Expenditures[2]

Industrial Commission	
Salaries and Wages	$000000000
Traveling and Field Expenses	0000000
Stationery and Office Supplies	000000
Postage	00000
Telephone and Telegraph	00000
Printing and Binding Reports	00000
Sundry Supplies and Expenses	00000
Books and Subscriptions	00000
Pictures	0000

[1] As at present classified.
[2] As at present classified.

No matter which form the appropriation takes, there exists an opportunity to administrative officers to use their business sense, to make adjustments to changing needs, to meet emergencies as they come up — to feel that they are a factor in the administration of government.

Upon such a basis it is possible to build an *esprit de corps* in the public service, to have all public officers and employees working for the common good — to build up administration — the greatest need of American democracy.

The Spheres of Legislation and Administration

The function of the legislature is to determine policies. The function of the administration is to carry out the declared policies of the legislature. The legislative responsibility is for a definite understandable policy; the administrative responsibility is for execution of the work-to-be-done. The legislative responsibility is to the electorate; the administrative responsibility is to the legislature. If this is a correct theory of our "division of labor" in government, then the lump sum, which declares a policy and leaves the method of working it out to the administration, would seem to accord better with the theory than the legislature declaring the policy, settling the details of its execution and having the administration record automatically the legislature's decision not merely as to policy but as to administration.

CHAPTER VI

THE LEGISLATURE AND THE BUDGET

PERHAPS the greatest immediate need of the whole discussion of the budgetary process is a clear definition of the function of the legislature in it. Abundant discussion there is of the executive's part in it, but rarely a word about the legislature's part. The budgetary functions and responsibilities of the legislature are an uncharted field. It is the purpose of this and the succeeding chapters to make soundings and to chart these functions and responsibilities somewhat comprehensively even if they serve only as a basis for later and better work.

I. THE RELATION OF LEGISLATURE AND EXECUTIVE

There was a time in British history when law was merely the declaration of existing practice, when it was merely an explicit statement of something that was implicit in custom — that is, it was the common law. This was a very convenient cloak behind which to hide the absolutism of monarchy. In those days the legislature was merely a " sampling " of the people. Its ideas, prejudices, and emotions were the ideas, prejudices and emotions of the nation. What they would accept the nation would accept. Hence it was a great convenience for the executive to have such a convenient organization " to try it on." This legislative situation is well defined by Bagehot in these words:

"The Parliament of to-day is a ruling body; the mediæval Parliament was, if I may so say, an expressive body. Its function was to tell the executive — the King — what the nation wished he should do; to some extent, to guide him by new facts. These facts were their own feelings, which were the feelings of the people, because they were part and parcel of the people. From thence the king learned, or had the means to learn, what the nation would endure, and what it would not endure; — what he might do, and what he might not do. If he much mistook this, there was a rebellion." (Bagehot, "The English Constitution," p. 345.)

The so-called executive budget would restore that situation as near as may be under modern conditions. It is very well expressed in the word "merely" in the following quotation: "Generally speaking, the executive authority (apart from the United States) has been conceived of as possessing powers of initiation and leadership while the legislative authority is regarded as possessing *merely* powers of final determination and control." (Report of the Commission on Economy and Efficiency, 1912.)

But it was most bluntly expressed in the provisions of the recent proposal for a revision of the New York State constitution. The governor proposed, but the legislature could accept or reject or reduce these proposals. As the attitude of the legislature developed, the governor could withdraw or amend or send in entirely new proposals at any time before final action by the legislature. The legislature would become largely an expressive body. In other words, the legislature would be merely a convenient agency for the executive to try out his various schemes and plans. Priority of bills as determined by the governor must

be respected by the legislature. Hence the word "merely." It is true the legislature was given some "scope" subject to executive veto after the executive had his program out of the way, but what avails it? The most that could be done would be patch-work, and that is the very thing which the so-called executive budget is designed to remedy.

It is the experience of the world and particularly of the Anglo-Saxon part of it that the budgetary power cannot be safely intrusted to an individual. And under American conditions with our inelastic set forms of government — with definite terms, even though they be short — the giving of such power to an individual or to different individuals in rapid succession will result in a wide variety of abuses without effective corrective while they are contemplated or being carried out. The safety here is in the free action of numbers of representatives in the legislature.

The legislature is still a "sampling" of the nation. It presumably represents the varied interests of the nation. It has knowledge of the national needs. It may be an aggregation of local interests instead of a coalescence of these into a truly national organization, but that is a fault to be remedied, and one which has been minimized, for example, in the English Parliament and may be here. *In the counsel of these interests, in the free play of the one against the other, in the mutual give and take of healthy associations, lies the destinies of a democracy.* For a time, it is true, a benevolent despotism may be more efficient, may make the people happier, may even reduce taxes, if we view these things alone, but one wonders: After

Marcus Aurelius — what? This vicarious service in the name of the nation if prolonged would be enervating and would be a more fertile field for a Commodus to do his evil works.

The executive budget is partly at least an expression of impatience with the legislature, with its stupidity, its apparent lack of knowledge, its selfishness, or, as it is most frequently worded, its inefficiency. And yet it is to such a body that we have committed our destinies. And some of the wisest or shrewdest of the sons of men have acknowledged the wisdom of the procedure. It is in this application that Lincoln's words are pertinent that "You can fool all the people some of the time, some of the people all the time, but you cannot fool all the people all the time." It is this faith in the common sense of the "People" that lies at the basis of the power granted the legislature in our government. It was pointed out by Talleyrand when he told Napoleon that there was somebody wiser than he and wiser than all his ministers. "Who?" asked Napoleon. "Everybody!" was the reply.

It is well to review here this basis for the legislative function in government. That this great power exists in the legislature, particularly with reference to budget-making, is evident from the power granted to the legislature. Take the case of the United States Congress by way of illustration. To it is granted these powers:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

"To borrow money on the credit of the United States;

"No money shall be drawn from the treasury, but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

Obviously while such powers are granted Congress, budgetary matters will be under its thumb. And as similar powers are granted the state legislatures, the control over budgetary matters is equally effective.

Viewed, then, from this standpoint, the function of the administration and the executive in budget-making is preliminary, preparatory. It is to place before the legislature in the fullest and most intelligible form the results of the administrative experience during the past fiscal periods and in the light of last year's experience and next year's probable needs to prepare estimates of financial needs in terms of a social program. The legislative power over these estimates must be absolute. In England where the executive is merely the organization of the leadership of the majority of the legislature, the legislature may delegate its power to a part of itself, which is always under its immediate control through a vote of lack of confidence.

The budget is the intelligent basis for the declaration of public policy. It is, therefore, peculiarly the legislature's "business."

In this chapter we shall consider the general question of the legislative function in budget-making, particularly as contrasted with the executive. The succeeding chapters will deal in detail with the specific phases of the budgetary process during the legislative period. How the organization, rules and character

of the legislature, both national and state, and the general legislative conditions affect budget-making is the subject of the next chapter. In other words, our subject is the budgetary procedure in the legislature — a subject very rarely treated in connection with budget-making. The whole contemporary discussion is preoccupied almost entirely with the executive preparation of the budget and the subject of accounting control.

What happens to the budget proposals when they are presented to the legislature? How is adequate consideration secured? What function does the minority serve? Does the administration play any part in the legislative budgetary procedure? Should it? How shall the legislature formulate its decisions? These and other similar questions are the subject matter of chapter seven.

But there is a special problem of the budget which deserves separate treatment. It has ramifications through all our national law-making and administration. It is the most potent influence in determining the substance of the budget act. What is it? It is the local character of the legislature. It finds its expression in the "pork-barrel," and that is the subject of chapter number eight.

II. THE BRITISH ANALOGY

British example and British experience are frequently used to clinch the case for an "executive budget" for the United States.

But is this British analogy fair?

Is it illuminating?

Is it apropos?

When we speak about an executive budget in England we must refer to a budget prepared by the cabinet or the prime minister. When we speak about an executive budget in America we must refer to a budget prepared by the President or by a governor. That being so, would authority vested in the President of the United States be looked at by Congress in the same way as Parliament looks upon similar power conferred upon the Prime Minister? The obvious answer to this question is "No!"

The reason for this, and the reason for the lack of application of British conditions to America, are found in the relation of Congress to the President as contrasted with British conditions.

The theory upon which the American government is framed is the theory of the separation of powers. Practically there is a hiatus between the executive and the legislature, and there is suspicion and distrust that would prevent any such delegated legislative power as the British practice and the American imitation propose.

The theory of the separation of powers was evolved, supposedly, from British experience. Unfortunately for the theory, British experience did not conform to the theory. "The efficient secret of the English Constitution," says Bagehot, "may be described as the close union, the nearly complete fusion of the executive and legislative powers." (Eng. Const. p. 78.) He says elsewhere, "A cabinent is the combining committee — a hyphen which joins, a buckle which fastens the legislative part of the state to the executive part

of the state. In its origin it belongs to the one, in its functions it belongs to the other." (Eng. Const. p. 82.) It is this intimate relationship of the executive and the legislature in England as contrasted with our own "separation" that makes the British analogy futile.

The executive of England is the creature of the legislature. To its own executive committee, a legislature may very properly delegate power that it would not dream of delegating to an outside agency. Moreover, it may delegate such power to such a committee when such a committee is under its immediate and continuing control through the simple device of the interpellation and the possible vote of lack of confidence. And then, too, public opinion does not have to wait two years or four years to express itself formally. Depending on the intensity of public opinion and its volume, it may be asked at any time to decide the issue of the day. In America no matter how great the crisis or how great the need for a formal expression of public opinion, the inelastic provisions of the law require that such expression shall come on a certain day one, two or three years away.

The weakness of the British analogy is very clearly perceived by Frederick A. Cleveland, the leading expositor of the executive budget, in these words:

"This thought may be left in closing,— namely, that until some such provision for making the 'electorate' and the 'representative body' effective instruments of control over the executive, the people will not sanction an increase in executive power sufficient to make him a responsible leader. They would prefer to continue to suffer from the results of

inefficiency, log rolling, pork barrel and all, rather than tie themselves up to an executive for a fixed term who could not be called sharply to account. The recent experience in New York may be pointed to as confirming this view. But if this be thought to be a too recent or too narrow experience, it is confirmed by a thousand years of Anglo-Saxon experience." ("Budget-Making and the Increased Cost of Government," paper read by Frederick A. Cleveland before the American Economic Association, December 28, 1915.)

It would seem therefore that on the general question of the relations of the executive to the legislature in budget-making, British experience is without value so far for direct imitation or adaptation because of the dissimilar relations of the executive and the legislature, because of the control exercised over the executive by the legislature in England, and because of the opportunity to permit public opinion to decide issues at any time instead of the arbitrary times for similar decisions in America.[1]

III. THE EXECUTIVE BUDGET IN THE LEGISLATURE

There can hardly be any difference of opinion on the proposition that the legislature, before it passes

[1]Compare: "Such efforts to accomplish reform in public expenditure are doomed at the very outset. Our theory of Government and our institutions do not permit the adoption of what many really seek — the British method of preparing a budget. It is a curious anomaly that while many publicists in the United States are so lavish in their praise and so determined in their advocacy of the British budget system, that in England it is now, and for some years has been, the subject of severe condemnation. In 'British War Finance,' 1914–15, Mr. W. R. Lawson, a writer of considerable note on financial matters, discusses extensively and condemns severely in the chapter entitled 'The doom of the one-man budget,' the system prevalent in Great Britain." (Speech of Mr. Fitzgerald, Congressional Record, Sept. 8, 1916, p. 16564.)

on the budget, should have every iota of information possible about social conditions, about administrative experience, and about financial conditions. It should go almost without saying that the administration should formulate its own experience to be presented to the legislature. The administration should know how effectively the governmental machine is meeting its duties and its opportunities. It was on the basis of this intimate day-to-day experience that elsewhere in this book it was recommended that the executive, the commissions and the courts should formulate the budget proposals. It may be assumed that when American public opinion really understands what the budget program is, it will require either as a matter of custom, if not of law, that the budget proposals shall be formulated by those close to the administrative problems. In other words, there is practically no difference of opinion on the *preparation* of the budget proposals by the administrative authorities.

The Question of the Executive Budget

Nor is that the fundamental problem raised by the "executive budget." The real question relates not to the preparation of the budget proposals, but to the *status of these proposals* before the legislature.

The contention of those in favor of the so-called "executive budget" is that the budget proposals are presumptively *the budget* unless the legislature rejects them in whole or in part. For example, the concrete proposition made at the New York Constitutional Convention was that the "executive budget" must be passed before any legislatively initiated financial

propositions should be considered. These, it may be noted, require a larger majority to pass than any of the governor's propositions.

The budget proposals are formulated by the executive and are final as to what items are included and maximum in amount unless special action is taken by the legislature subsequently to the passage of the budget — and this action would be subject to executive veto. The net result of this is that an executive with a minority of one more than one-third of the members of one house could defeat any proposed financial legislation subsequently to the passage of the budget.

In other words, if an executive failed to include in the budget proposals, the civil service commission or the labor department or any of its bureaus, the legislature could do nothing except it was sure of a two-thirds vote of all members elected to the legislature or of those present,[1] or the number necessary to override a veto — in the last days of the session this would mean a practically unanimous vote of those in attendance.

If the legislature wants a different formulation of the budget, or the insertion of new items or of increased amounts, it can practically compel it by rejecting the budget a sufficient number of times, though it cannot legally insert such changes. The executive may at any time recall the budget proposals for any amendments he wishes. And so long as the budget proposals are before the legislature it cannot formulate changes. Should the debate in the legislature reveal

[1] Depending on local requirements.

the need for changes, they cannot be made by the legislature at this stage. The only thing that can be done is for the executive to recall the bill for such changes if he wishes them made.

Even under such restrictions there is a way that the legislature may assert itself if it really wants to. A motion would be in order to pass the budget except all material after item 1. Upon the passage of such a motion the budget would consist of this single item, and the whole process of budget-making would be before the legislature. With the further provision in the New York Constitution of the "lapsing" of appropriations at the end of the fiscal year, such a situation would be critical.

The whip hand is given to the executive and a minority of either house of the legislature. It is the contention of this book that in a democracy such a provision, particularly with a practically irremovable executive for a fixed term, is anomalous. The main reliance of popular government must be on the "many" in the legislature rather than on the executive for the declaration and control of public policy.

It is pointed out by those who believe in the executive budget that all that a legislature can do is to be a ratifying agency in matters of finance. This is simply a modern way of saying that the legislature is *merely* an expressive agency. The legislature is dethroned and the executive enthroned. A detailed statement of this view is given in a note at the end of this section.

Proposed Solution of the Conflict

The crucial test in budget-making, according to the advocates of the executive budget plan, is the settlement of difference between the executive and the legislature on important appropriations. In the executive budget the whole process of budget-making is directed to a subordination of legislative difference of opinion and the supremacy of the executive. The budget-making proposals of this book are directed to the freest interplay and exchange of views between the executive and his representatives on the floor of the legislature and the legislature itself, with the final say remaining as at present in the legislature itself.

One remedy of this conflict of the legislature and the executive proposed in the discussion of the budget in connection with the revision of the New York State Constitution was thus phrased: "In case the legislature is unable to agree on an administration appropriation bill submitted by the governor, or as amended by him, before the beginning of the next fiscal year, the several established departments, bureaus, offices and commissions under the jurisdiction of the governor shall be authorized *by executive order* to expend public moneys at the same rate, in the same amount, and under the same conditions as were authorized for the concluding fiscal year." (Budget Systems, p. 253.) This is strictly in the spirit of the executive budget. It is another evidence of the spirit of turning to the executive for everything. The expedient used in the Congress of the United States is the passing of a concurrent resolution. This leaves the control of funds

where in the interest of democratic control, it belongs: in the legislature. A better device for avoiding the administrative cataclysm and securing continuity of governmental activity is the continuing appropriation.

None of these means, however, solve the fundamental problem. But the proposition as it went to the New York Constitutional Convention recognized the necessity of ultimate popular control, though those who advocated it did not protest against its elimination in the constitution as adopted by the Convention.

The only excuse for giving the executive the extraordinary powers which were proposed was the presence of means to make effective popular control. That was its safeguard. This was gently dropped and left an executive that is almost an autocrat.

The constitutional amendment providing for an executive budget for the state of Maryland — formulated under the same influences as the New York constitution — also omits this fundamental provision in its plan for the executive budget. As already pointed out, even Dr. Frederick A. Cleveland sees and emphasizes the need for this ultimate popular control: "Until some such provision for making the 'electorate' and the representative body effective instruments of control over the executive, the people will not sanction an increase in executive power sufficient to make him a responsible leader."

Dr. Cleveland in the same article puts very well the need for this ultimate popular control. He lists among the essential provisions for an effective budget system the following, which will bear repetition be-

cause its advocates seem so completely to forget it as soon as a practical proposal is made:

"Provision whereby any important issue may be settled either between the executive and a majority of the representatives of the people, or, in case this is not possible, by having the issues referred directly to the people at an election to determine which of the partisans to the controversy will be retained in the public service, the essential purpose of such action being to make the government responsive to the will of a majority, and to put the administration into the hands of persons who are in sympathy with the policy adopted." ("Budget Making and the Increased Cost of Government," Address delivered by Frederick A. Cleveland before the American Economic Association, p. 68, Dec., 1915.)

We regard the reference of such issues to the citizenship for decision in a time of political crisis as a beneficent change in our governmental scheme, because of its great formative results on public opinion and because of its great dynamic power in educating the public. But no such revolutionary change — and it is revolutionary though it is tied on to an autocratic scheme — is possible in this generation. If it comes sooner, well and good! But there is a more immediate problem, the conflict of the legislature and the executive. The executive budget system is so arranged that differences are practically decided in favor of the executive because the number of votes needed to reverse executive proposals would be in practice exceedingly difficult to secure toward the end of the session. Under the plan proposed in this book the executive power of giving the legislature information and of making recommendations is utilized in the

initial step of budget-making. The budget proposals are placed before the legislature by the executive. But they are given no artificial support. They stand or fall on their worth. In a conflict between the legislature and the executive through the system of continuing appropriations existing appropriations stand and continue until the law-making agencies agree on a change.

SUMMARY: THE LEGISLATIVE FUNCTION IN BUDGET-MAKING

Definite responsibility for the final form and amount of the budget is on the legislature. This is merely another way of saying that control of the purse-strings is, where a thousand years of Anglo-Saxon history says it should be, in the legislature. The executive's part in budget-making is merely preparatory; the legislature's part is final. The responsibility placed upon the executive is for full accurate information; the responsibility upon the legislature is for decision upon appropriations in the light of all the facts, both those submitted by the executive and by others.

Budget-making must therefore in the final analysis be a legislative function, and American democracy will not, if it realizes what it is doing, tie the hands of the legislature in any way in the budget-making process.

The variety of community interests represented in the legislature must have the freest play in the formulation of the social program as embodied most effectively in the budget. To that end, therefore, the budget proposals will come to the legislature for whatever

actions it sees fit to take in the light of the social needs.

NOTE

The point of view of this section was made the basis, by Professor Fairlie of the University of Illinois, of a criticism of Frederick A. Cleveland's exposition of the "executive budget idea" at the 1915 meeting of the American Economic Association (printed in the *American Economic Review*, March, 1916, pp. 81–82). It will be well to give Dr. Cleveland's complete reply on this point to Professor Fairlie and to add in a parallel column a few questions and comments.

Professor Fairlie's comment on the second possibility is this: "If decision is to be made on referendum or recall of the governor and the governor's budget is approved, the legislature will soon be reduced to an agency for ratifying the governor's proposals." Again may we say, what of it? Is it better to ratify the individual proposals of from two to six hundred members of a legislative body representing local constituencies than it is to ratify the proposals of an executive who has been elected by the whole people and who spends his whole time (1) thinking about the business in hand? Is it better to ratify one or another of the proposals of men who have no responsibility (2) whatever for administration and who have little or no contact with the current management of affairs? (3) Which has produced better results in the past, the ratification of log-rolling proposals of individual members or the ratification of the well-considered (4) plans of responsible executive leaders? Or is Professor Fairlie disturbed because the legis-

(1) Where are the executives who spend their whole time thinking about the business in hand? Is Dr. Cleveland over-emphasizing the contrast?

(2) Have not legislators final responsibility for administration? Are not administrators legislative agents?

(3) Has an executive just elected any contact with the current management of affairs? Have executives any current contacts with actual administration? Are governmental executives business managers?

(4) Are not "well considered" and "responsible" begging the question? Where in the United States have there been *well considered* plans by *responsible* executives, as Dr. Cleveland must be using the words?

lature on financial measures will be reduced to a ratifying agency? What else can a legislature do on matters of finance? Assuming that finance measures are initiated in a standing committee, is not the legislative body still a ratifying agency? (5) But furthermore, when they ratify the proposals of their standing committee they do so in a very different procedure than when they ratify the proposals of the executive. When the executive lays before them a measure for approval or disapproval they put themselves in a critical attitude, and members are given opportunity to ask questions openly of the executive and to have them answered publicly. (6) Furthermore, the "committee-of-the-whole" procedure becomes an important factor and the floor of the legislature becomes an opportunity for the Opposition.

Where executive officers are required to lay before legislatures their proposals, publicity is the key-note of legislative procedure; where a legislative committee (7) in the hands of a legislative majority leader that cannot be held responsible to the state or nation initiates the measure to be ratified, the procedure is one of "gag-rule," the purpose being to forestall criticism and to protect those who stand with this irresponsible leader. These are differences that are fundamental in their importance. There is nothing to be feared from the legislature being "Reduced to an agency for ratifying executive proposals." The review, ratification, or rejection of executive proposals is what in last analysis the legislative branch has

(5) Is it necessarily? May it not overthrow completely the recommendations of its standing committees? The writer has seen the Wisconsin legislature reject a university appropriation from the joint committee of finance and work out in the Committee of the Whole its own appropriations for the university. What I object to is that under Dr. Cleveland's executive budget plan, the legislature is necessarily merely a ratifying agency. When budget estimates are intelligently prepared and supported by information convincing to the legislature, then the legislature may safely be a ratifying agency, but it should be such only when the budget proposals "stand on their own feet," and acquire no presumptive legal right by the source of their preparation.

(6) With these very proper and highly desirable safeguards why should it be necessary to bolster up by legal buttresses the executive recommendations on the presumption that they are carefully prepared (which they may or may not be) instead of on their intrinsic worth?

(7) This is *not* the alternative. The alternatives are: (a) a budget prepared by the executive which is in effect the imposition of the executive will on the legis-

been created for so far as relates to matters of finance. ("Budget Making and the Increased Cost of Government.")

lature in the exercise of the fundamental legislative power, the control of the purse strings, and (b) a budget prepared by the executive which is submitted to the legislature without artificial supports and whose value depends upon intrinsic values.

CHAPTER VII

LEGISLATIVE ORGANIZATION AND THE BUDGET

BUDGET-MAKING is in the final analysis a legislative function because in the legislature is placed the "control of the purse." This was the conclusion of the last chapter. It was further pointed out that no restriction must be placed upon the legislature in dealing with budget proposals to the end that there may be a genuine expression of the views, needs, knowledge, experience and even prejudices, of the representatives of the people. Responsibility for the budget act is therefore placed directly upon the legislature.

The important thing in the legislative phase of budget-making is to secure adequate, coördinated, pertinent and public discussion of the budget proposals. Perhaps the basic element in securing or preventing such discussion is the organization of the legislature.

There are three elements in legislative organization that have a very direct bearing on the effectiveness of the legislature to perform its function in budget-making. They are: its organization into two houses, the committee system and the legislative rules. These elements will be discussed in these pages primarily with reference to Congress, though some reference will be made to the situation in the states.

I. THE BICAMERAL LEGISLATURE

An increasing volume of criticism is being directed against the bicameral legislature. Is it not simpler and more effective to have a legislature organized in a single house? Would not this prevent unnecessary double consideration of legislative measures? Would not this prevent friction? Would not a single house tend to secure a more careful consideration of bills because one house of the legislature could not "shift the responsibility" to the other house because there would be no other house? Could not legislative responsibility be more definitely fixed in a single house legislature? These are essentially the points raised in favor of the single house: simplicity of organization, definite responsibility and consequent efficiency. The general discussion relates to the whole range of law-making; our concern is limited to the relation of the bicameral legislature to making appropriations.

At least part of the case for the bicameral legislature may be presented, too, in a series of questions: How many times have jokers been discovered during the consideration of appropriation and other bills in the second house? How many times has it been that the real character and danger of a bill have been discovered *after it has passed the first house?* How many times has the disagreement of houses on bills really forced an amount of public consideration greater than a bill has had in its whole course through the legislature? May not these results make one pause before rejecting an institution so obviously useful?

But there is another reason which may serve as a

foundation for the points already made. With a country as large as ours, with its diversity of interests, the process of law-making which affects these interests ought to plan definitely to give these interests, both public and private, legitimate opportunity to inform themselves on the provision of proposed laws and to organize their forces to place their experience at the service of the law-makers. Apart from the questions of geography and distance, there are important questions of content of laws that should have public consideration. Modern legislation and modern budgets are dealing with a multiplicity of subjects of the most complicated character. To formulate public opinion on these subjects is a matter of considerable time. The double consideration of these measures is in the interest of an informed public opinion upon them — provided of course the rules of the legislature permit genuine discussion on the floor of the legislature. If they do not, the thing to do is not to change the structure of the legislature but its *rules*.

This point of view makes the case for the national bicameral legislature *at this time* conclusive. Insofar as the states are smaller and deal with less complex problems, this particular argument is a little less conclusive, but it is, however, sufficiently conclusive as not to justify any change. The difficulty of organizing public opinion or of permitting a public opinion to form on a state-wide basis is ample justification for no change at present. In cities of more compact organization, dealing with less difficult or less complex problems, and in any case, with the machinery of public opinion comparatively well organized and capable

of being quickly mobilized, the case for a bicameral city council is, it seems, inconclusive.

There are many persons with very orderly minds who cannot conceive of the lack of directness, of the friction, of the misunderstanding of the bicameral legislature as serving any useful purpose. The unæsthetic character of the legislative process annoys them. It is its artistic faults they condemn. These are remedied, they believe, by the single-house legislature. And their faith is based on the artistic grounds that all the foregoing æsthetic faults are remedied, and the one-house legislature is beautifully simple. Presumably the case is made. But is it? President Lowell of Harvard put the answer very well before the New York Constitutional Convention:

> "Of course, it is a great deal easier to work in a government the simpler it is; it is simpler to work a government with one House than with two; but it does not always follow that the simpler form of government, which is the easiest to work, is always the best. Good results usually come from more or less friction. If a thing works too easily it does not always work best. The very fact that you have two Houses, and consequently some friction between them, it may be good, or it may not. It does not follow that any system of administration which is the easiest is the best. I think you could work with two Houses or one. Of course it would work easier with one." ("Budget Systems," p. 422.)

The Conference Committee

But a special evil of the bicameral legislature is the Conference Committee. This is called by Lynn Haines "the worst parliamentary institution of all." And more definitely: "The Conference Committee

meets in darkness and keeps no public record of its acts. Its reports are of the highest privilege and cannot be amended. It is the culminating feature of a parliamentary system that is unbelievably dark and undemocratic. So long as there is a bicameral Congress, it will be next to impossible to eliminate this evil." (Lynn Haines, "Your Congress," p. 107.)

In the bicameral legislature the Conference Committee is the parliamentary machinery for settling differences of opinions between the houses. It is perhaps a necessary institution in a bicameral legislature, but it is not at all clear that the evils pointed out by Mr. Haines will be impossible to eliminate. To remedy the evils pointed out in the last quotation two things need to be done. The first is: "Let there be light" on the Conference Committee. The Committee should have public meetings and (or) all of its acts should be a matter of public record. The second thing to do is to limit the Conference Committee to settle points of disagreement and no others. This is the practice in the state of Wisconsin where the Conference Committee is successfully though rarely used.

The power of the Conference Committee is particularly liable to abuse over appropriation measures which are being considered for a fiscal year which has already begun, and the department is operating under temporary authorization. If the state is financed on an annual or biennial basis and not on a continuing basis, some legislative action is necessary, and a department is at the mercy of a very small group of men — the majority of the Conference Committee. Compromise, give and take, and perhaps worse are possi-

ble — perhaps probable. In states like Wisconsin, where the public service is financed on a continuing basis, and the legislature has not determined upon a definite positive policy — hence the disagreement of the houses — legislation is *not* necessary, and the very existence of departments does not depend on the action of a Conference report.

Even from this point of view the evils of the Conference Committee are not inherent defects of the bicameral legislature but are due to the absurd rules governing the procedure and reports of the Conference Committee. The remedy is a reformation of the rules governing the Committee, not a unicameral legislature.

II. THE PRESENT STANDING COMMITTEE SYSTEM

Practical reform of legislative organization is directed at the present committee system. There is now widespread criticism of the dark-lantern methods of committee meetings, of the almost total absence of any record of committee doings, or meaningless records, and of the autocracy of committee chairmen. There is a growing public sentiment against these perversions of legislative machinery. Budget-making is equally affected by these general conditions of committee organization, and the reform of committee organization will be in the interest of improved budgetary procedure, as will be shown.

Submitting the Budget Proposals

Doorkeeper: Mr. Speaker, a message from the President.

Messenger (bows): Mr. Speaker.

Speaker (bows): Mr. Secretary.

Messenger: I am directed by the President of the United States to deliver to the House a message in writing containing the revised budget estimates for the next fiscal year.

The budget is before the Congress.

What shall be done with it?

Two general types of procedure are followed. The estimates may be referred to standing committees or they may be referred directly to the membership of the legislative houses sitting as a Committee of the Whole. The custom in this country is universally to refer budgetary estimates so far as they are prepared to standing committees. These two procedures will form the major topics of this section of the book. However, a more or less concrete discussion of present procedure may very well serve as a point of departure.

Congressional Procedure

Departmental estimates are prepared and transmitted to the Secretary of the Treasury in accordance with prescribed forms. These are put together by the Secretary of the Treasury and transmitted to the houses of Congress.

The rules [1] of each house provide exactly for the reference of each section of the estimates to the appropriations committees. How the estimates are divided and to what committees they are referred is indicated in the following table:

[1] Rule XI of the House and Rule XVI of the Senate.

CHRONOLOGICAL HISTORY OF ESTIMATES AND APPROPRIATIONS 1915–16

[H. R.]

Title.	Law, 1916-17.	Law, 1915-16.
Agriculture	$24,948,852.00	$22,971,782.00
Army	[1](267,596,530.10)	101,974,195.87
	267,596,530.10	
Diplomatic and Consu	5,355,096.66	4,061,280.01
District of Columbia [2]	12,841,707.10	11,859,584.45
Fortifications	25,747,550.00	6,060,216.90
Indian	10,967,644.88	9,771,902.76
Legislative, etc.	37,925,690.25	36,904,799.75
Military Academy	1,225,043.57	1,069,813.37
Navy	313,300,555.84	149,661,864.88
Pension	158,065,000.00	164,100,000.00
Post Office [3]	322,937,679.00	313,364,667.00
River and Harbor	[4]40,598,135.00	[5]30,000,000.00
Sundry civil	[6]128,299,285.24	[6]126,922,750.79
Supplemental estimate		
Total regular annu	1,349,808,769.64	978,722,857.78
Urgent deficiency 1916,	197,684.17	
Urgent deficiency 1916, general	13,442,997.17	
Urgent deficiency, Nav	3,479,046.06	12,316,343.90
Urgent deficiency, Arm	8,611,502.11	
Urgent deficiency, Arm	27,536,068.83	
Deficiency, 1916, and p	[10]15,288,468.65	

Does this first step of Congressional procedure help to secure the best budget for the United States? Let us see.

[1] App.— Appropriations Committee.

The obvious trouble with the reference of the appropriation bills at present is revealed by a glance at the table. It is the apparently haphazard, ill-considered, unrelated consideration (if there be any at all) of the budget estimates as a whole. The aggregation of estimates as at present collected is not the expression of a national plan or program, but is merely an aggregation. Even if these estimates were revised by the President as they should be, they would be none the less merely an aggregation. The preparation of these estimates is prescribed by Congress and in its larger aspects such preparation is determined by present committee organization. An attempt by President Taft to rearrange the estimates was met by a severe expression of Congressional disapproval.

An examination of these bills reveals the fact that the various items entering into a national program, say public health, are never considered together. The various elements making up what the nation is now doing to promote public health are nowhere brought together. No committee considers them as a whole. Each committee considers the fraction of the subject that is referred to it and arrives at its decision not with reference to other public health activities of the nation, but by itself or with reference to entirely unrelated subjects. Congress itself nowhere considers the subject itself or has presented to it a plan in which it can fit individual items into a complete statement of what we are doing for such major activities of government as public health. See what the result is of distributing without plan to different committees the various elements entering into the government service.

This prevents any coördination in a committee. The condition described resulting from a number of committees considering parts of what ought to be a correlated program is aggravated by the fact that these committees consider these bills at different times and report in their recommendations at still other different times. This makes coördination of service programs practically impossible.

These conditions are further aggravated by other facts. The financing of the overhead charges at Washington is presented in one bill and considered by one committee; and the financing of the field services in the same department is presented in another bill and considered in another committee. And, furthermore, none of these appropriations are considered with reference to either a national spending program or a national revenue program.

And committees, as will be pointed out more definitely a little later, develop a peculiar affection for and interest in the departments which come within their jurisdictions. This is natural. But one of its results is that there are in each house seven or eight roads into the public treasury, and, as Mr. Tawney put it, "as many byways as there are members of these appropriating committees."

There is abundant perception of the defects of this system both inside and outside of Congress. As long ago as 1904 Mr. Burton put the case very aptly:

"I desire to touch briefly upon some of the dangers which pertain to our system of making appropriations and raising revenue and to some of its characteristic features.

"The most characteristic feature can be expressed in one

word — the word 'severance.' First, the severance of the executive department from the legislative; next, the severance of the committees or branches of the legislature which provide the revenue from those which determine expenditures, and, third, the severance of the committees which consider estimates and present appropriation bills." (Congressional Record, Fifty-eighth Congress, Second Session, March 15, 1904, p. 3295.)

The explanation of this rather remarkable and obviously bad procedure is historical. "The committee organization," said President Taft in a message to Congress, "is largely the result of historical development rather than of the consideration of present needs." (President Taft's Message to Congress, June 27, 1912.)

From the beginning until the Civil War all financial measures in the U. S. House of Representatives, whether for expenditures or for revenue, were considered by one committee — the Committee on Ways and Means. In 1865 because the Committee on Ways and Means was overburdened, its work was divided with the Committee on Appropriations, all questions of expenditure being referred to the Committee on Appropriations, and all questions of revenue being referred to the Committee on Ways and Means. "And in 1885," says Representative Fitzgerald, "a number of important appropriation bills were taken from the Committee on Appropriations and given to other committees of the House."

"The history of that movement," continues this chairman of the Appropriations Committee, "shows unquestionably that it was undertaken largely for the

purpose of breaking the power of Mr. Randall of Pennsylvania, who at that time, as the chairman of the Committee on Appropriations, a man of great power and force, twice speaker of the House of Representatives, had led a revolt in the Democratic party in the preceding Congress, by which the enacting clause of the Mills Tariff Bill was stricken out; and in order to break his power the movement was initiated and culminated in the distribution of these bills. ("Budget Systems," Bulletin of the New York Bureau of Municipal Research, June, 1915, p. 300.) In that year the appropriation bills relative to the army, navy, Indian affairs, foreign affairs and rivers and harbors were assigned to other committees. At the present time the Appropriations Committee of the House has jurisdiction over six of the fourteen supply bills.

This beginning of the budget procedure in the Congress is in a chaotic condition and calls for immediate correction before any effective budget can be established.

The Improvement of Present Procedure[1]

The present procedure calls for a radical change. The change may be made in the direction of an improved standing committee procedure or in the substitution of a thoroughgoing committee of the whole procedure. Both will be discussed in detail. The present discussion relates to the improvement of standing committee procedure.

[1] The problems of rules reform is intimately connected with the subject matter of this section but is reserved for separate treatment. The question discussed here deals solely with number and organization of committees.

In the Congressional discussion there are two principal reforms suggested regarding committee organization. The one, sponsored most persistently by Representative Fitzgerald, is a return to a single committee on appropriations in place of the existing appropriation committees. The other, sponsored by Representative Sherley, is also for a single committee — a super-committee — but to be composed of the chairmen of the existing appropriation committees, which are continued in existence, and certain members of the Committees on Rules and on Ways and Means. These will now be discussed and also the proposal for a joint committee on finance.

The Super-Committee Proposal

Representative Sherley's proposed super-committee disturbs the present organization of Congress least. In fact it accepts it and adds to it. Mr. Sherley's proposal is contained in the following resolution:

"Resolved, That the following rule be added to the rules of the House, and to be known as section 6 of Rule X:

"6. There shall be a committee on estimates and expenditures, whose personnel shall consist of the following members: The chairmen and three ranking majority members and the ranking minority member of the Committees on Ways and Means and Appropriations, and the chairmen and the ranking minority member of the Committees on Rules, Agriculture, Foreign Affairs, Military Affairs, Naval Affairs, the Post Office and Post Roads, Rivers and Harbors, and Indian Affairs. The chairman of said committee shall be selected by the members thereof. Said committee shall, as soon after the convening of each regular session of Congress as may be, report to the House the amount

of revenue probably available for appropriation for the next fiscal year, and apportion the amount to the several appropriation bills within the jurisdiction of the committees empowered by the rules and practice of the House to report appropriations from the Treasury. This report, or supplementary reports to meet exigencies of the public service, may be made on any legislative day after the reading of the Journal, and when agreed to by the House shall limit the totals of the appropriations reported by the several committees."

And Mr. Sherley's statement in defense of his proposal may be quoted rather fully:

"The proposal is substantially this: That instead of undertaking what I believe to be the impossible task of bringing back to the Committee on Appropriations jurisdiction of all the supply bills, to create a committee composed in its personnel of the heads of the various appropriating committees. I gave to the Committee on Ways and Means representation greater than any other committee except Appropriations. I did that because the Committee on Ways and Means is properly charged with the great function of determining the amount of revenues that shall be available. I gave to the Committee on Appropriations a preponderance over other appropriation committees, not out of partiality for that committee, but because it has under its charge six of the great supply bills, whereas the other great appropriating committees have only one, except in the instance of the Committee on Military Affairs, which reports two supply bills. I also made as a part of that committee the chairman and the minority member of the Committee on Rules, because that is necessarily the great political committee of the House and should have a voice in a matter so fundamental as the arrangement of a budget.

"This committee would consist of 16 majority Members and 10 minority Members. It is urged that that is too large a number, but I desire to suggest to the House

that it is really two committees, because the majority members would necessarily come to their conclusions in private, just as the majority members of the Committee on Ways and Means now do, and they would then present to the minority members their proposal.

"A counter proposal of the minority would be made, and those two proposals would come to the House for adoption or modification. These reports would bring to the attention of this House and require the consideration by it of the real purposes of government and of legislation, for in the final analysis nearly every proposition that comes before a deliberative body is one either of taxation or expenditure.

"Now, I insist that one of the most vicious things that has occurred in America has been the constant raising of revenue without any consideration of the needs of revenue for the purposes of government, and, as a result of that — having a country whose tax limit has never been even approached, let alone reached — we have at various times piled up great surpluses in the Treasury, a constant invitation to extravagance in expenditures.

"This report when adopted should be made a limitation upon the power of any committee to report. As an illustration, the committee on the budget estimates that the revenues will amount to a thousand million in the ensuing year and that that sum should be the amount proper to be expended. Having determined that general amount, it then allots it, and it says to the Army, 'You will have $90,000,000.' It says to the Navy, you shall have a hundred and thirty million dollars — of course, I am speaking just in loose figures — and to the various other appropriating committees, you can appropriate such sums. The problem, then, that will confront the department will not be simply how much can we expend — that has been determined — but how best can we expend that sum in the interest of the people of America? And instead of having the ingenuity of the department expended in trying to arrive at reasons for increased appropriations you will compel every department which comes with a particularly new or pet proposal of theirs to show something that can be

eliminated or economized in order to make room for the new proposal." (Speech of Hon. Swagar Sherley in House of Representatives, Feb., 1913.)

This proposal is built on the assumption that appropriations must be kept down, and in order to do that it is further assumed that prior to the consideration of any of the supply bills a maximum shall be established in accordance with the probable revenue for the next fiscal year. And then subsequent to this the maximum for each appropriation bill shall be determined, and the special appropriation committees may not report bills in excess of this amount.

This is a wholly mechanical way of attacking the budget problem. The assumption may or may not be desirable. In a period of national or state expansion it is a hindrance. In a nation or state whose revenue system is admittedly tentative (and every state is in this situation) any budget plan based upon a tentative revenue system must be likewise tentative.

The fundamental error in the whole procedure is that it begins at the wrong end. THE STARTING POINT OF THE BUDGET INQUIRY MUST BE THE ECONOMIC AND SOCIAL NEEDS OF THE SOCIETY WHICH THE GOVERNMENT SERVES. A full consideration of these is mechanically restricted practically, if not necessarily, by the financial limitations set by the super-committee.

If the super-committee decides the limitation for all bills and of each appropriation bill, it must practically determine the items upon which these bills are made or else it is not acting on the fullest information. How then can it arrive at its totals?

Let us see what is the practical result of this proposal.

It is to introduce a new sphere for log-rolling. As pointed out elsewhere the present organization of the legislature for appropriation purposes is unaffected. Accompanying it is a result that has been noticed by all competent students of the subject. Congressman Fitzgerald words it thus: "It is inevitable that those who administer a service and those who formulate the legislation that determines the activity of a service will be keen to be overgenerous rather than critically scrutinizing in providing means to conduct the service. If retrenchment is imperative, they believe it should be elsewhere, and nothing is done to curtail the service with which they are intimately identified." (Congressional Record, March 15, 1915, p. 6363.)

Bringing these selfish interests together will not tend to make them less selfish. It makes the committee on estimates and expenditures the arena for the give and take of log-rolling. It puts the members of this committee from the Committees on Rules, on Ways and Means and on Appropriations in a very powerful position because frequently they will hold the balance of power. Upon them will depend the success of this plan if it is put into operation unless there is a power greater than they.

And there is. And Mr. Sherley thus describes how it will operate. The sixteen majority members will meet in private, reach a conclusion and present it to the minority, just as they do in the Committee on Ways and Means now. The minority will similarly formulate a proposal, and both propositions will go before the House.

It is unquestionably true that Mr. Sherley's pro-

posal is very much better, indeed, than the present practice. It takes into account very fully the present situation and is probably the most practical next step because it is conceivable that Congress may be willing to take it.

The Single Committee

Mr. Fitzgerald proposes through a series of amendments to return to the Appropriation Committees practically [1] all appropriation matters. "The effects of these changes," says Mr. Fitzgerald, "would be to enlarge the Committee on Appropriations sufficiently to enable its work to be properly done. It would place on that committee the chairmen of the committees which now have annual supply bills, so that they could continue in touch with the respective bills now committed to legislative committees over which they preside. This would largely reintroduce a practice which has followed from the creation of the Committee on Appropriations in 1865 till the end of the Forty-fourth Congress of having as conferees on the respective supply bills two members of the Committee on Appropriations and one member of the legislative committee having jurisdiction of the legislation affected by the bill." [2]

[1] "The question of the naval program could not be determined upon the appropriation bill. The number of officers, men, and vessels of every character would be provided in separate bills reported by the Committee on Naval Affairs, as would the increase or reduction of the commissioned officers and enlisted men and their pay and allowances be reserved for separate action by the Committee on Military Affairs." (Congressional Record, June 24, 1913, p. 2159.)

[2] Minority as at present would have one-third representation.

The idea of a single committee merely as a device to secure reduced expenditures is not convincing. As has been frequently pointed out in these pages, it is a placing of the cart before the horse. It is this arbitrary maximum, too, in Mr. Sherley's plan that seems inadvisable. However, as a remedy for what Mr. Tawney calls "unnecessarily increasing appropriations" [1] (*Review of Reviews,* Sept., 1910), and what Mr. Cannon calls more directly "needless appropriations," [2] there can possibly be no question. But in this discussion the distinction must be carefully made between "lower" and "needless" appropriations.

But as a remedy for a crazy-quilt appropriation plan for piecemeal consideration of appropriation bills singly without reference to the others, the single appropriation committee plan, if there is to be a standing committee, is a beneficent reform.

Mr. Harlan Updegraff, formerly of the United States Bureau of Education, has worded quite uncon-

[1] "The real remedy for unnecessarily increasing appropriations lies in the adoption of a rule upon the organization of the House in the Sixty-Second Congress, authorizing the appointment of one committee sufficiently large to represent all sections of the country, vested with exclusive jurisdiction over all estimates for appropriations. This would be a genuine reform in the rules of the House, one that would be of practical benefit to the people. It would save to the Federal Treasury from fifty to seventy-five millions of dollars annually." (Congressional Record, June 24, 1913, p. 2160.)

[2] "Mr. Speaker, that change, in my judgment, based upon intimate knowledge and observation, has cost this country many, many millions of dollars in needless appropriations and expenditures. . . . No matter what the stress of circumstances may bring about in our national life now or hereafter, or how necessary it may become to apply the pruning knife, it can never be done without harsh and inequitable results through the medium of many committees as now provided under our House rules." (Congressional Record, June 24, 1913, p. 2160.)

ously a conclusive argument for the single committee plan. He complains that the lack of development and comparative lack of influence of the Federal Bureau of Education is due to the fact that its appropriations were considered by the Appropriations Committee who balanced its needs against the needs of the other departments that were presented to it. Had these appropriations been submitted to the Education committees of the House and Senate, larger appropriations would have been given, and says Mr. Updegraff, "In consequence of the higher appreciation which would have resulted, it is also quite probable that the Congress would have increased its appropriations from year to year until their magnitude would have become more nearly commensurate with the high regard in which all Americans hold their public schools." (Congressional Record, June 24, 1913, p. 2160.)

In short, Mr. Updegraff wants the education appropriations considered by what he later calls "friends at court." He wants to take advantage of the condition repeatedly pointed out that committees dealing with a single department acquire *a special bias* for the department with which it specially deals. In other words, he is in favor of increasing the number of special committees considering appropriation bills — prolific cause of log-rolling.

At this point Mr. Updegraff's words may be quoted in full:

"However, there is an underlying cause for this situation in the business procedure of each of the two Houses of Congress. Under this procedure the estimates for some departments are acted upon by their friends at court, while the

estimates for other departments are passed on by a tribunal whose main object is economy. All appropriation bills for the Department of Agriculture are prepared in the House Committee on Agriculture, and are reviewed in the Senate by the Committee on Agriculture and Forestry. This same practice also holds with the appropriations for the Diplomatic Service, the military service, the naval service, and the postal service. On the other hand, the appropriations for the other branches of the executive departments are prepared by the Committee on Appropriations of the House and are referred in the Senate to its committee of like name. Quite naturally the attitude of these Committees on Appropriations toward the estimates submitted by their respective branches of the executive department is distinctly different from that shown by the committees which recommend the appropriations for a single department or bureau. Members of the latter class of committees have their attention centered on one particular set of governmental activities, which they hold in growing appreciation as their knowledge of the work increases. On the other hand, members of the Committees on Appropriations have their attention divided among several departments and independent offices and commissions, all of which are more or less desirous of increased funds. *Strong attachment to the work of any branch of the Government service is not fostered by such a condition.*[1] Moreover, the numerous insistent demands that come upon them develop a controlling idea in the minds of these Appropriations Committees — not the great good that may come to the people through any branch of the service, but rather the desirability of cutting appropriations to the lowest possible limit in order that the party in power will not be held accountable for large expenditures. In brief, all the appropriations for the Department of Agriculture, and the principal appropriations for the War, Navy, and Post Office Departments, are in the hands of their friends, while those of the remaining Government offices must come before a tribunal the chief aim of which is to keep the total appropriations, including those framed by

[1] Italics are ours.

the special committees, within certain fixed limits. It follows from this that the liberal appropriations recommended by the special committees have a tendency to lower the appropriations for the other departments, which are drawn directly by the Appropriations Committees. Had the estimates of the Commissioner of Education during the past 40 years been referred in the House to the Committee on Education and in the Senate to the Committee on Education and Labor, there would undoubtedly be to-day a far different story to tell. If such a reform in the procedure of the Houses could be carried out to-day, an increased participation of the National Government in the educational development of the country would probably result." (Congressional Record, p. 2160, June 24, quoted from *American School Board Journal* for May, 1912.)

Mr. Updegraff seems not to realize the alternative in the public interest that all appropriations should be referred to an agency which will give them a critical review, which will balance the needs of one department against the other — and ultimately of one social need against the other. This is the consummation in consideration of budget needs both by executive and by legislature that is devoutly to be wished for.

And yet there is much truth in Mr. Updegraff's protest and his contention. He is right in protesting against making budget decisions solely on financial considerations; he is right in protesting against having one service considered by its friends in the light of its own peculiar needs, and another service of no less social urgency considered, principally, with reference to financial considerations and without regard to its special problems and needs. He is undoubtedly right in his statement of the net result upon our own national

educational agency — the Bureau of Education — of our present method of national financing. But he is wrong in his method of remedying the condition. We want not a further disintegration of our national budget-making machinery, but an integration; and we want social considerations not less prominent than financial.

There is a further advantage of the single committee plan under the proposed method of preparing budget estimates recommended in this book. The departmental estimates have been submitted to the executive and revised by him to express a state or national financial and social program. It is essential that this plan be not broken up and considered piecemeal without reference to its other parts. It is essential therefore that the whole plan be considered together and preferably by the same persons. This is best accomplished by means of a thoroughgoing committee of the whole procedure. Under a standing committee procedure it is accomplished best through a single appropriation committee.

The Joint Committee on Appropriations

If the single appropriation committee is accepted as the agency through which the houses of the legislature wish to handle appropriation matters under a standing committee procedure, then it ought to be possible to take the next step. That step is the adoption of a joint committee on finance or appropriations. In Wisconsin such a committee is provided for in these words: "At the commencement of every session of the legislature there shall be appointed by the respective houses a joint standing committee consisting of five

members of the senate and nine from the assembly, to be called the committee on finance; all bills or accounts requiring the appropriation of money by the legislature and all bills providing for revenue or relating to taxation shall be referred to said committee before being passed or allowed." [1] A highly condensed summary statement of the advantages of such a procedure is here given for the sake of completeness.

In Wisconsin the joint committee procedure works admirably. No question has been raised as to the "jealousy of the houses," but the daily contact of the leading members of each house has helped very much, indeed, in mutual understanding. The reference of appropriation bills to conference committees instead of being the usual thing is comparatively infrequent. While perhaps there is no saving of the time of the individual committee, there is a saving of the time of the legislature because presumably when one house is ready to act, the other house is also ready or will be shortly. There are none of the vexatious delays of the usual separate consideration of finance bills by committees.

[1] The other provisions of the law are: "Such committee shall keep a full and complete record of all bills, accounts, and claims referred to them, and of its proceedings thereon, which record shall, at the close of each session of the legislature, be deposited by the chairman of such committee in the office of the secretary of state, who shall, upon request, deliver the same and the records of any previous sessions to the committee on finance of the next succeeding legislature. The chairman of such committee shall return all such records to the secretary of state at the close of each session. Such committee is authorized to employ a clerk when necessary." (Wisconsin Statutes, 1915, Sec. 106.) During the sessions of 1913 and 1915 the joint committee on finance took over the accounting staff of the State Board of Public Affairs to assist it in shifting the data and getting information directly from the departments and institutions of the state.

But more important than the saving of the time of the legislature is the saving of the time of citizens, through saving their appearances before both committees. Moreover, the joint character of the committee adds dignity to its proceedings and would be a stimulus to citizens to appear before it because more is at stake and a large group of influential members of the legislature may be appealed to. Proceedings before a joint committee on finance are more likely to receive newspaper publicity than separate treatment in committees in each house. And newspaper reports of committee hearings are a valuable means of stimulating citizen interest in legislative budget-making.

Perhaps in conclusion it should be pointed out that joint consideration of proposals by a joint committee on finance does not mean joint consideration by the two houses of the legislature. The legislative consideration will proceed as usual.

Committee of the Whole Procedure

When deciding on the spending policy of the government was a process of "crazy-quilt" legislation, there was some excuse for the standing committee procedure in budget-making. When departments did not dare or refused to present carefully prepared information formally to the legislature so that it might have an intelligent basis for action, and when the executives refused to use their power to inform Congress on the state of the union in order to present a comprehensive appropriation plan, the legislature had to get the information somewhere, had to study the subject and formulate bills. When members introduced appro-

priation bills affecting various departments and their own constituencies, the legislature had to provide a clearing house agency to organize the chaos. Thus was the standing committee justified.

But with all plans of budget-making the preliminary work is transferred to where it belongs — to the administrative departments. The collection of the information and its organization with specific reference to budget-making needs are preliminary work that may very properly be done by those governmental officers who have the day-to-day experience in administering the laws. Hence the justification of the standing committee in organizing the chaos of older methods of budget-making is considerably lessened by the new procedure recommended in practically all budget plans.

There are, besides, certain evils — remediable, however — that have grown out of the standing committee that may be mentioned in this connection. Congressional committees, through their power to report or not to report, hold absolute sway over legislative proposals, and most frequently this power is personally exercised by the chairmen. Besides this autocratic power of committees, or perhaps making it possible, are the dark-lantern methods of committees. Practically all the work in formulating the various phases of the sovereign act is done behind closed doors. This means lack of both legislative and public consideration of these bills. Besides this lack of legislative and public consideration in formulating bills, there is no opportunity for either after the bill reaches the floor of the legislature for final action. The budget bill or

bills are pancakes to be served, and they are brought in the last minute and " gulped " down.

These evils of the standing committee procedure in practice make all the more desirable the introduction of the committee of the whole procedure. The budget proposals as they come to the legislature are immediately ready for legislative discussion. Why not begin it at once? The best device for doing that is in the committee of the whole.[1]

The committee of the whole is an informal organization of the whole legislature. It permits non-members to address the legislature. It is before the legislature in a committee of the whole that administrators are summoned to answer questions. It is most frequently in a committee of the whole that the legislature is a critical agency. It is *via* the committee of the whole that in many cases the legislature chooses to work out big legislative propositions. In the states the committee of the whole is not used to a very great extent. In the United States government it is used much more.

The very great advantage of the committee of the whole procedure is that its setting fits the occasion of the consideration of the sovereign act. It furnishes a background for first page publicity. It is this potentiality that makes it possible to secure concurrent con-

[1] In the House of Representatives one must distinguish between a Committee of the Whole and a Committee of the Whole House on the State of the Union. Though both illustrate the committee of the whole procedure there have developed practically different functions. The Committee of the Whole now deals with private bills only; the Committee of the Whole House on the state of the Union deals with public bills and it is to this Committee that we would have budget proposals submitted.

sideration of the budget proposals by the legislature and the public and stimulate a healthy interaction between public opinion and legislative budget-making. To secure these ends the committee of the whole procedure must, of course, be public, which it is in all cases.

The presence of the whole legislature or a goodly number of the legislators would be a challenge to those citizens or administrators who are to appear before them to give careful consideration to what they say and especially to have an adequate basis of fact for their proposals or criticisms. This condition, too, would tend to dignify the consideration of the budget. Many of the persons who appear before committees would not appear before the legislature in the legislative hall. The white spotlight of publicity would be too glaring. The trivial character of many committee discussions would be abated because one is more likely to be considerate of the time of a large number of people who wouldn't be so considerate of the time of a small number. Though these factors count, the great justification of the committee of the whole procedure is that it facilitates and stimulates public consideration of the budget alongside of the legislative consideration.

It is under these conditions that public hearings on the budget would be held. It would make many of these very much more worth while than they are at present.

Need for Organization in the Legislature

But the presentation of a carefully prepared plan by the executive to the Committee of the Whole will

not be handled intelligently unless there is definite legislative organization. In the succeeding chapter various elements entering into such legislative organization are outlined in detail. In the first place the opposition should be organized as an agency of criticism as a part of the administrative polity. Provision for first hand presentation of the administrative program by the administrative officer should be made on the floor of the legislature. The legislative majority will, if for no other reason, organize its own forces to meet the organized efforts of the opposition.

One notices a rather striking change that has recently come over the national House of Representatives. There are no longer desks in the House, but simply chairs or rather benches. In addition, however, there are two large tables, one for those supporting a measure, the other for the opponents. This is merely an outward sign of the more definite organization of the legislature. As will be seen a little later, there is provided for the minority in the legislature the machinery and power of independent investigation. This will compel organization on the part of the majority. Without this organization for the effective consideration of bills it would be futile to throw the budget directly into the legislative arena.

With the potentialities in our system of a legislature opposed to the executive, of a legislature divided against itself, it may be advisable to prepare a special rule for the preliminary consideration of the budget proposals by a legislative committee. This consideration may be had during the time that the legislature is holding its public hearings on the bills in the

Committee of the Whole. At any rate, the reference of budget proposals directly to a Committee of the Whole presupposes some legislative organization so that there shall be intelligent consideration in the public interest. The details of this organization are described elsewhere.

III. RULES REFORM

But even if the organization of the committees were satisfactory, there would remain the larger question as to how this organization would function. No matter which form of organization be adopted, there are certain evils in Congressional procedure which must be described and adequate remedies sought. These evils are made possible through the fact that a clique — bipartisan in character — is in control of the House of Representatives in particular and prevents both public and adequate discussion of all propositions, financial and other in the House, and prevents adequate public information of what is happening in Congress. Control of the machinery of legislation is through several legislative devices: the caucus, the Rules Committee, and the Conference Committee.[1]

A member introduces a bill and from that moment his control over it is gone. It is put in the mill of the Congressional machine — the innermost group. The routine business of Congress is done through standing committees who have power of life and death through their power to report or not report bills submitted to them.[2] The Committee was organized

[1] For Conference Committee, see p. 133.

[2] "Standing committees keep no public record of their acts.

at the beginning in the interest of the machine. But early in the career of a bill the caucus takes hold if necessary. Its power may be indicated in the following statement by a close student of the subject:

"The greatest fallacy of all is the contention that the caucus sometimes is used to promote good legislation. The caucus in its influence is always obstructive, and never constructive. Not once in the last Congress did the caucus contribute the deciding factor of strength to secure the passage of a measure. On the other hand, it was employed repeatedly to shield and mantle with vague, shifting irresponsibility the obstructive tactics of so-called leaders." (Lynn Haines, "Your Congress," p. 76.)

"Yet the majority party caucus, an unofficial institution, essentially secret, its meetings held behind barred and bolted doors; with no record of the debate, not even a sound escaping; with no assured integrity of the meager records it does keep; with absolutely no power to prevent dodging or the manipulation of quorums; with its portals ever open to pork-barrel bargainers, and all the underground influences of politics; with rarely more than a fourth of the whole membership of the House doing the deciding, has often usurped the official functions of the House itself." (Ibid, p. 77.)

The Rules Committee through its absolute power operates the machine and keeps it going producing models on the same pattern.[1] Changes are abhorred.

With only two or three exceptions, they keep no calendars. At present there is chaos in this direction. Members themselves have to take hours and days if they want to investigate bills along any certain line." (Lynn Haines, "Your Congress," p. 102.)

[1] "During the Sixty-Third Congress, after this assurance that the Committee on Rules would play fair with the independent, anti-machine members, and that it could be depended upon to do what the House had no power to compel, sixty-eight different

The *status quo* is maintained. The caucus prepares the plan and the Rules Committee carries it into effect.

The net result of the system as affecting all kinds of bills is lack of both adequate and public consideration of law-making.

The present organization of Congress is designed to promote neither adequate consideration nor public discussion of bills. The system is controlled and maintained by pork. The remedy for the pork-barrel is indicated fully in the second chapter on the pork-barrel (Chapter X). But the "machine control" of the legislature is built into the legislative organization through the standing committee organization and the peculiar powers given to the Committee on Rules and to the caucus. So far as standing committee organization is responsible for lack of consideration of budget proposals, the remedy described elsewhere (p. 135) is found in a thoroughgoing committee of the whole procedure. But in so far as the change to a committee of the whole procedure is not now possible, the remedy is to be found in rules reform.

The principal changes required in the rules of the legislature that are fairly described by this section of the discussion may be summarized as follows:

1. Meetings of standing committees should be public.

amendments to the rules were introduced. Congress closed with sixty-seven of them still buried in the Rules Committee. The only proposal acted upon was one offered by Mr. Henry himself (H. R. No. 104), which involved only the creation of a new standing committee on roads." (Lynn Haines, "Your Congress, pp. 93–94.)

2. Reports of standing committees should contain roll call of members on each bill.

3. Committees should report to the legislature each week the status of all business before it.

4. Committees should publish calendars of meetings at least a week in advance of the meeting.

5. Committees should report all bills submitted to them in a definite limited time — finance bills might very properly have a little longer time than other bills — or secure time from the House for further consideration.

CHAPTER VIII

LEGISLATIVE CONSIDERATION OF THE BUDGET

If legislation by representatives is a failure — and a failure due to the inherent character of the system — then we ought to recognize the fact and attempt to devise other means to secure the desirable results that we hoped would flow from the present system. Some people do believe that the representative system has broken down completely and urge the substitution therefore of a small commission of legislative experts. With that proposal we have little patience, and the unlikelihood of its being accepted in any case in the near future does not warrant a digression. Other people would undermine the representative system insidiously by the so-called executive budget.

I. ARE LEGISLATURES A FAILURE?

The issue thus raised will be settled ultimately by the character of the legislative discussion of the budget proposals. That legislative discussion is occasionally a farce and may be frequently a waste of time, no one doubts. But that present American legislative organization or legislative procedure is directed to securing genuine discussion — pertinent discussion — adequate discussion — public discussion of budget proposals, may be safely denied.

Newspapers have frequently described the perfunctory character of legislative discussion of important projects. The orgy of the last night has been characterized in the best style of the newspaperman. How disgraceful the legislative consideration may be sometimes, overriding even existing means to prevent abuse, is shown in an article by ex-Governor Hodges of Kansas describing some "doings" of a Kansas legislature. The ex-Governor says:

"'The bulk reading of omnibus appropriation bills totaling $1,318,779 was the only vaudeville feature of the day!' So said the Topeka *State Journal* — the official state paper of Kansas — in its account of the doings of the Kansas Legislature.

"With a dozen members reading and singing a dozen different appropriation bills at one and the same time — and members on the floor and visitors in the gallery shouting, 'Louder! Louder!' — the House members considered, deliberated and appropriated over one and a quarter million dollars of the state's funds in an old-fashioned singing-school style.

"It was a regular 'Chorus of Money,' the *Journal* continues, as the House sang out the appropriations — a real, true, genuine omnibus passage of laws. No member objected to the procedure, which represented the expenditure of a vast sum of other people's money!

"The Speaker announced 'A bulk roll call and a bulk reading of bills'; and, calling a dozen owners of basso voices to the stand, each member was given a bill that carried an appropriation for some state institution or state department. 'Is every one ready?' asked the Speaker. A dozen members, with a dozen bills, answered: 'Aye, aye, sir!' 'One for the money, two for the show, three to make ready — and four, they go!' shouted the presiding officer.

"And the reading members went. They sang and mum-

bled and shouted the words on the pages of the typewritten bills — each reading from a different bill, with separate provisions. 'Louder!' shouted the members. 'Louder! Louder!' chorused the gallery visitors, who saw a moment of revelry in an otherwise uneventful day.

"While the bills were being read members pounded on their desks, and the reading ended in an uproar in which the members, clerks and visitors participated. The roll was called and a deliberative body of lawmakers placed its official approval on measures that called for the expenditure of one and a third million dollars, appropriated in bulk form, in a duration of possibly ten minutes of time.

"Making laws is a serious undertaking and making appropriations is a vital part of the state's business. The one hundred and twenty-five members of the lower branch of the Kansas Legislature seemed to think that appropriating a vast sum of money — by a mass meeting, as it were — was only a vacational recreation; while at other times they discuss with owl-like wisdom for an hour or more the best method of shortening hatpins!" ("Common Sense for Commonwealths," by George H. Hodges, *Saturday Evening Post,* June 12, 1915.)

Though such conditions as Mr. Hodges describes are exceptional, they indicate the potentialities of abuse of the present system. Occasional legislative discussions could no doubt be quoted — in Kansas, too — that are as dignified and as illuminating as this one was the reverse. But there are legislative devices and means for preventing just such abuses. And these will be described in this chapter.

The legislative consideration of the budget ought to focus public attention on the budget proposals in a significant way. *The audience of a national legislature is not the membership of the legislature and the few spectators in the gallery, but the nation.* This

makes the legislative discussion a means of educating the citizenship of very great value in budget-making, and goes to the very foundations of our government. Its further advantage is that it brings back into the legislature forces of public opinion otherwise without effect, or without even becoming articulate. It is this "action and reaction" of the people's representatives and public opinion which will assure the success of our great democratic experiment.

II. SECURING COORDINATED DISCUSSION: A SINGLE BILL OR MANY

Our present system of making appropriations may very properly be described as "crazy-quilt" legislation. There is no more system about it than there is in a crazy-quilt. Appropriations for the same department are made in various bills. Appropriations for widely different purposes are made in the same bill. We have absolutely no plan. Appropriation bills are presented to the legislature in driblets. Appropriations affecting any one department are not present in any one bill. In 1912 a special investigation in Wisconsin showed that there were from two to fourteen separate appropriations affecting single departments scattered throughout the statutes.[1] Wisconsin has since remedied this condition by placing all appropriation acts in one chapter and all appropriations affecting a department in one section or group of sections of the statutes. But most of the states continue the old condition. Bills are brought out by committees not for

[1] Special Report of the Joint Committee on Finance of the Legislature of Wisconsin, 1912, p. 14.

the purpose of serious consideration but for the possibility of passing. Slowly these individual bills are presented. The legislature is very frequently without anything to do pending hearings on the financial bills, and then with a great rush, on the closing days and in the closing hours of the closing days of the session, appropriation bills are brought in involving millions of dollars which nobody has had the opportunity of examining carefully in their final form.

It is in the midst of such conditions as this that financial legislation is passed. The only result that can possibly come from this is confusion worse confounded. This surely is the result. In many cases it takes weeks after the legislature has adjourned to determine how much money has been appropriated to various departments.

The obvious remedy for such methods of appropriating is some method of coördination. It would seem utterly impossible to discuss pertinently or adequately these miscellaneous proposals brought in at odd times. The intrinsic worth of each of these things ought to be discussed, but so ought their *relation* to other similar activities of government and to the whole social program. Passing appropriation measures by driblets does not secure such discussion nor can it. To remedy this situation the proposal is made that the whole financial program be brought in in a single bill. The reasoning back of this proposal is very simple and easily understandable. The individual items in our state or national financial plan must be related to the whole program in order to be intelligible. It is therefore necessary that the complete program should be

presented, and hence the necessity of a *single bill.*

There is need — and pressing need — for correlated discussion of the various elements entering into the national or state program. But it may be denied that the bringing together in a single bill of all the elements entering into our national program is the only way to secure this coördinated discussion or is the best way, or actually secures such discussion.

Sooner or later in all governmental divisions, the executive will prepare the budget proposals for submission to the legislature. Such a proceeding may seriously affect the value of the single bill plan. Under it a legislator has presented to him at the beginning of a legislative session a complete plan for financing the existing organization with such information for other years as will throw light on the new proposals. With this information and the machinery for securing information proposed in this book, separate bills could be fitted into their place in the complete program and acted upon accordingly. Action is then not blind, haphazard, uncoördinated. It may have as definite a relation to the whole as if the appropriation were embodied in a single bill. And thus the need for a single bill is not so evident as would on the impulse of the moment seem to be necessary. The ends to be attained are attained through these separate bills.

But in order to safeguard this presentation of separate bills there ought to be provided as a rule of the legislature that no appropriation bills shall be presented until hearings have been held on all the budget bills. It ought to be provided also that no bill shall be passed for an organization, department or bureau

until the legislative budget for the various special functions which it performs is formulated with respect to the entire service of the state or the nation. For example, if educational work is performed by five or six departments, no bill ought to be passed for any one of these departments until the complete budget is considered, and in this connection it might be advisable to have the budget presented in the form of things to be done rather than under the form of the departments that are to do them.

Other aspects of the single bill proposition should be noted briefly. A single bill to be passed at one time is a direct incentive to log-rolling. So many interests are represented that great pressure of the members is exerted to push the bill through for the sake of a single one or a few of these interests. On separate bills this log-rolling may also be arranged, but the possibility of individual roll calls is a preventive, and the very separateness of the bills does not invite, though it may permit, log-rolling.

Further, if the single bill is made up of detailed items as distinct from lump sum items, then nothing is gained for the estimates are already before the legislature in this form, and the legislature will have to take up the departments or services, or perhaps individual appropriations as a succession of separate propositions, and because of that they might just as well be in separate bills. If the appropriations are of a lump sum character, it is the details of the budget estimates about which the discussion will revolve. These have also been before the legislature from the beginning. And if these are discussed in the com-

mittee of the whole, the committee will take up propositions as under a detailed appropriation plan. It would seem, therefore, that everything that would be gained by a single bill in the way of coördinating the various elements in the budget program and the legislative discussion of them, is secured through the submission of comprehensive budget proposals by the executive and other officers at the beginning of the session. The consideration of appropriations in a series of separate bills which may be fitted into a comprehensive program as the discussion proceeds, accords with the fact and the necessities of the legislative discussion of the budget proposals of the executive.

III. MAKING PERTINENT DISCUSSION POSSIBLE: CHARACTER OF ITEMS IN BUDGET BILL

The character of a discussion is determined largely by the way the question is framed. How shall the legislature frame its budget questions?[1] But before that question is answered another should be raised. How may the legislature frame its budget policies? Shall the legislature say:

Here is so much money for each of the bureaus making up your department?

Or shall it say:

Here is so much money to do these definite pieces of work?

In which form legislative decisions shall be put can be determined only with reference to the legislative function. The legislative function in our govern-

[1] An answer to this question will have an important bearing on the form of the budget estimates as submitted by the executive.

ment is the declaration of public policy? Can public policy be best declared — or declared at all — by making appropriations by organization units, i.e., departments, bureaus, boards, divisions? You may have five thousand dollars for the accounting division or for the child hygiene bureau, or for the welfare service of the health department. It will be understood, of course, that funds must, in the final analysis, be given to the larger organization units. The problem now is in giving this money to the larger organization units shall it be definitely assigned by the legislature to the smaller organization units? From the standpoint of public policy organization units may or may not be significant. Appropriating money to sub-organization units may be a way of declaring public policy, if the department is organized functionally, but then it is an indirect way. Appropriating money to a bureau or other organization unit of a department makes it independent, makes it practically impossible for reorganization within the department for better serving its purposes. If government organization is static and is functionalized, then it may be possible to declare public policy by means of appropriations to organization units. But in a progressive society like ours, with government anything but static, except where it is not serving its purpose, such appropriations are futile as a means of declaring public policy. Moreover, the question must inevitably come if appropriations are made to organization units: To do what? Perhaps the question may be: To buy what?

Can public policy be best declared — or declared at all — by making appropriations by objects of expendi-

ture? You may spend, Mr. Department Head, twenty-five thousand dollars for personal service or for supplies or for equipment. Does that express public policy? Hardly. But before giving a more definite answer to this question, a misconception that frequently enters into this discussion may be cleared up. From the accounting point of view, which has unfortunately been controlling in a large part of the budget discussion, objects of expenditure are of very great importance. They are the elementary facts of the whole accounting system. *They are the means of rendering an account of stewardship for funds granted. But they are of principal concern to the administrator rather than to the legislator.* To the auditing and accounting officers they are of fundamental importance as an instrument of control; to the legislator they are of subordinate importance. It is not, however, through objects of expenditures as such that legislators declare or can most effectively declare policies. After the legislature has declared public policy in its fiscal aspect, it is primarily the job of the administrator to marshal "the objects of expenditure" to achieve these policies. However, in the budget proposal objects of expenditure may very well be given, not only as a basis for an account of stewardship but as the elements entering into the financial cost of public policies. Hence it is not through "objects of expenditures" that legislators can best declare public policy.

Can public policy be best declared — or declared at all — by making appropriations by projects or functions? You may have, Mr. Department Head, five thousand dollars for food inspection, for workmen's

compensation administration and the like. That we shall or shall not have food inspection, or that we shall have this or that much food inspection are questions of public policy. And hence the budget bill should be in terms of functions or projects in order that the legislature may definitely answer these questions of public policy. It is by such formulation of the budget bill that the legislative consideration of the budget may be directed to fundamental questions of public policy rather than to subordinate questions of financial stewardship.

IV. PERMITTING ADEQUATE CONSIDERATION OF THE BUDGET: THE LIMITED SESSION

Let it be assumed that the legislative machinery is so organized that a coördinated budget is possible. But that is not all. That is purely formal, even though important. It is necessary that the coördination of parts shall come as a result of adequate consideration, and moreover that this consideration shall not be by representatives merely, but that the consideration shall be so managed as to provoke public discussion.

First as to the question of adequate consideration. And the first point to be mentioned has not, so far as is known, been raised in the budget discussion. It is the relation of the limited number of day sessions to the securing of adequate consideration of the budget.

If the legislature had a definite piece of work to do and was of one mind in doing it unmolested by outside influences, setting a time limit might be desirable, particularly if it were possible to determine a correlation between the work to be done and the probable time

needed to do it. But the work to be done is not very definite, and the legislators are not agreed as to what shall be done and how it shall be done, and interests of many kinds are exerting pressure in many ways to influence them to get many things done and undone, or not done.

But despite this fact, state constitutions have imposed a limit on the number of days the legislature may meet. For example, the constitution of the state of Wyoming provides that the legislature shall be in session "not to exceed forty days." (III, 6.) This means calendar days. When it is taken into account that usually in the "popular" branch of the legislature at least one-third of the members are new members, and it usually takes a month for the legislators to throw off the suspicion they bring with them, to get acquainted, to inform themselves in many ways, and to get to working, it would seem preposterous that such a time limit is set upon the length of the legislative session. But if we are really going to develop the representative opinion in the legislature and permit the organization of an effective public opinion outside, the proposition is absurd. And when we consider the range of subjects which a modern legislature must actually consider, and its function of questioning the old and proposing the new, we do not know what adjective to use unless it be ridiculous.

There is another consideration this definite setting of a day of *adjournment sine die* calls forth. It is the orgy of a last night of the legislature. The legislature is more or less tired from its work during the past one, two, three, four, five or six months' work. Pres-

sure has been put on by the leaders during the past few days. It is the last day. The legislature has been in almost continuous session from ten o'clock in the morning. It is now midnight. The clock has been set back. Bills are reported in pell mell. Reports of disagreements of the other house come in. Committees of conference must be appointed. A member discovers a joker in a bill, or the committee has tacked on a rider, or a department is given so much more or less. The amendments are voted down. Discussion, if any, is heated or irrelevant or both. Parliamentary maneuver is rampant. Roll calls more or less abbreviated are had. The legislature dies in an orgy. Exactly what happened both the legislature and the people will learn in a few days.

The greatest contributing factor to this orgy is the limited number of days session. Perhaps the business of the session might have been accomplished within the time limit, but interests were subtly at work delaying, dilly-dallying with minor matters in order to "put some things over" on the last night. The same result is secured also in legislatures with unlimited sessions where under the influence of the desire to go home the legislature imposes on itself a certain day for adjournment. This is particularly easy to bring about in a legislature of farmers who have been in session from January until the time for "sowing the crops" has come.

The Obvious Remedy

The obvious remedy for the situation described is to remove any limitation on the length of the session.

The legislature ought to adjourn when its work is finished. It ought to be permitted to proceed with its work in its own leisurely way, if it chooses to be leisurely.

There is a popular misapprehension that a legislature does nothing anyway. The limited number of day session is a result in part of this misapprehension. There is need for the diffusion of general information on what the function of the legislature is, and as to the character of its work. People generally do not realize the value of time in the maturing of legislative projects, nor the number and extent of these projects. Newspapers can perform a real service to democracy by undertaking this work of enlightenment.

If the legislature is really made an agency for provoking public opinion as is proposed, this public opinion will be the best corrective for an abuse of length of session.

Some states recognize the need for unlimited sessions but are anxious to prevent prolonged sessions. These states provide for paying the per diem for a certain number of days of the session, and then reducing or omitting it. A few examples may be given: [1]

"Three dollars a day from commencement of session but not to exceed in aggregate $120 for any one session." (Ore. IV, 29.)

"Four dollars a day for each day of session, for a period not exceeding 60 days; if longer in session to receive no compensation." (N. C. II, 28.)

"As provided by law but not to exceed $5 per diem for first 70 days of each session and after that not to exceed $1 per diem for remainder of session, except during revising

[1] Cf. Tenn. where absence is penalized.

session, when they may receive $5 per diem for 120 days and $1 for a day for remainder of session." (Mo. IV, 16.)
(Taken from "Index Digest of State Constitutions." Prepared by the Legislative Drafting Research Fund of Columbia University, pp. 898–899.)

But there is a more serious result than lack of consideration which may follow the limited number of day session if persons care to practice the manipulation which it invites. It is the destruction of administrative departments, e.g., of the administration of the pure food law or what not.

And here is another example of the futility of considering single propositions apart from their context. Prolonged sessions of the legislature make the community, especially the business interests, uneasy. Short sessions will make breathing easier. Why not adopt limited sessions? Some of the reasons for not doing it are given above. Another is given below.

In most of the states appropriations are made annually or biennially. At the end of the fiscal period, by constitutional provision, all appropriations lapse, and the departments are without funds. The appropriation bills are usually brought in at the end of the session — and sometimes on the last night. Disagreement between the houses leaves the department "high and dry." Failure to agree leaves the department without funds during the next fiscal period. A determined majority in one house could thus stop the wheels of government, or of a department or departments.

Similar situations in Congress are patched up by means of resolutions continuing the department on the

basis of last year's appropriations. The real remedy for this situation is in continuing appropriations as has already been stated.

A Reinforcement

The evil effects of the orgy of a last night of a session may be brought about in a session of a legislature which does not have to adjourn because of expiration of time limit where the members agree in advance to adjourn on a certain day *sine die*. This situation could be met in part by a provision in the state constitution or perhaps better in the rules of the legislature requiring that all appropriation bills in their final form shall be printed and lie on the desks of the members for at least three legislative days, which shall not be less than three calendar days. This would permit two full legislative days after the last bill was brought in. This would not necessarily prevent all the evils of a last night orgy, but it would at least give some opportunity to members to inform themselves as to the contents of bills, as they come from the committees. If a number of important bills are presented three days before the close of the session, the evils of a last night are not avoided by the rule. Of course the number of days required may be increased.

V. SECURING ADEQUATE DISCUSSION

(a) By Public Discussion

The first condition for securing adequate discussion of the budget proposals in the legislature is the *public* consideration of them. Dark-lantern methods, gumshoeing by lobbyists and private hearings in committees

are the usual substitutes for public discussion. These will be discarded, and in their place there must be a consideration of budget proposals that will bring to bear on the proposals the whitest searchlight of publicity and keep it there steadily.

As is elsewhere pointed out in this book, this is secured by an immediate reference of budget proposals to a committee of the whole of the legislature, and the elimination of the dark-lantern and subterranean ways of the usual standing committee procedure. In the committee of the whole there is the machinery for the manufacture of first page news. The stage is set for something to happen of great public importance about the public's most serious and significant business, its government. It is likely to happen and does happen.

While the legislature is making up its mind, the public is having the opportunity of making up its mind. And the public reaction will be frequently a decisive factor and always an influential one in the legislative decision.

The proposition that the public business is of public interest and the plans for conducting it and financing it should be publicly considered seems almost self-evident: It seems to be self-evident to every one — except the majorities in the legislature.

(b) By the Participation of the Public in the Budget-Making Process

The public consideration of the budget proposals by the legislature is of very great importance, but of immensely more importance is the participation of the

public itself in the budget-making process. It is generally regarded as desirable that there should be this participation in budget-making and the more of it there is the better for the budget act. But there is serious difference of opinion as to the stage in the process of budget-making when the public should participate most actively.

One view maintains that public hearings be held in connection with the formulation of the budget proposals by the executive "whether the executive wants them or not." The other view maintains that there is no special need for these public hearings before the governor or, at any rate, they should not be made mandatory if the budget proposals as prepared are submitted to a committee of the whole of each house or to a joint committee of the whole.

PUBLIC HEARINGS BEFORE THE GOVERNOR

The view that there should be public hearings before the executive grew largely out of the rather successful experience of New York City in utilizing similar hearings for effective budget-making. But the all powerful Board of Estimate and Apportionment of New York City is the real budget-making power there, and the poor shadow of a legislature, called the Board of Aldermen, is practically without power. In New York City there is a coalescence of legislative and executive function in the Board of Estimate, and hence its experience is not by analogy pertinent in a discussion of state and national budget-making.

But perhaps there may be some worth to the proposition despite the worthlessness of the analogy. How

would the proposal operate? The executive, whether the President of the United States or a governor, would spend weeks listening to the expression of citizens on each department of the government, but to what end? To help the executive formulate the budget proposals? What would be before such hearings as a basis of hearing is the raw material of the budget proposals, namely, the departmental estimates. It is this preliminary character of the whole work done by the governor, and particularly of the departmental estimates, that indicates that this is not the place for the concentration of public opinion and public interest. The executive may call such hearings, if he wishes, on the whole budget or on only such part or parts as he wishes advice. An executive will probably seek out persons who are informed on the subject for guidance. No objection is here made to the executive holding public hearings, but normally this is not the place for the concentration of public interest. If it can be focused here and again in the legislature, so much the better. But the major thing is to bring it to bear most effectively on the legislature for there rests the real decision. It is the merely preliminary and recommendatory functions in budget-making that the executive performs that do not encourage the widest public interest at this point. Assuming always that the executive has time and has the necessary preliminary information to relate it to such information as the hearings develop, the duty placed upon the executive to make the proposals, and the character of the legislative consideration that these proposals will receive as outlined in this chapter, will make it necessary for the governor to secure the very best

information, both expert and lay, both official and unofficial. It is the freedom of the legislature to act upon the budget proposals that will make the executive peculiarly sensitive to public opinion and anxious to seek it out effectively.

However, in an executive budget where there is not this legislative freedom of action in dealing with executive budget proposals, it is of extreme importance that the public should "get into the game" before — long before — the budget proposals are formulated, for the form in which they are submitted by the executive is presumptively the budget. It is because of the adventitious status given to the executive budget proposals in the so-called executive budget scheme that the public ought to participate in their formulation. And presumably the only way this can be done is through public hearings before the executive, despite the fact that such hearings held at the state or national capital will be only indifferently attended, if attended at all by the citizenship generally.

PUBLIC HEARINGS IN COMMITTEE OF THE WHOLE

The budget estimates as made by the department heads are tentative and do not have standing until approved by the governor. The administrative departments are expressing their judgment of financial needs to meet the social situations as they find them. The governor in his criticism of them brings a lay point of view, but presumably not entirely inexpert. Until the fragmentary departmental estimates are coördinated and coalesced into a state or national program for the next fiscal year, any criticism is directed toward some-

thing that is merely tentative. It would be well to have the benefit of as wide a public criticism of these as is possible. But if these preliminary skirmishes are going to discourage in any way the fullest mobilization of public criticism at the most important juncture in the whole process of budget-making, that is, before the legislature, then they ought to be abandoned. If, however, the omission of budget hearings before the governor is an excuse for the usual provisions in the executive budget plan that the governor may at any time before final passage withdraw his proposals and substitute others, then we have submitted two evils for what was at least a partial good.

But with the executive budget proposals before the legislature, a situation is created which invites and stimulates public participation. Public hearings in a committee of the whole not only make possible but offer the best opportunity for participation by the public in budget-making.

The setting is peculiarly appropriate. The meeting is held in the legislative chamber itself. Visitors are present in the gallery. Presumably all or a majority of the members of the legislative house are present. Here is a matter for consideration of the whole legislature. And there are present the representatives of the executive departments whose budget proposals are up for discussion.

The occasion is peculiarly appropriate, too. The executive budget proposals are before the legislature. There is all the potential material of a dramatic clash of executive and legislature. The legislature is calling in the public for whatever guidance it can give. The

decision is to be made — and it must be made by the legislature — as to the very character of the government and the extent of its program for the fiscal period covered by the budget proposals.

Helping to reach such a decision under such conditions as have just been described is a fitting occasion for the public participation in budget-making. It has a reflex influence on all preceding stages of the budget-making process. It impresses the public itself with the importance of the budget discussion and raises it above the level of the informal talks of the small committee room. Persons appearing before the committee will probably come better informed, better prepared to present their case and ready to answer questions. There will be a tendency to exclude much of the drivel, half-baked plans and irrelevant criticism of the usual committee hearing. The very setting and importance of the occasion will do that.

The very occasion invites " first page " publicity and will produce an amount of public discussion that will have a very great reflex influence on the legislature itself.

And the great advantage of the mobilization of public criticism at this point, besides its effect on administrative officers and executive in budget-making, is that it is being presented where it will count most and count most in the final decision as to what the budget will be. It strengthens, too, the basis for the legislative criticism of the budget proposals and stimulates it by offering cues. These may be followed up later, as pointed out in the next subdivision of this section and in the succeeding sections of the chapter.

(c) The Privilege of the Floor for Administrative Officers

The administration under the direction of the executive, let it be assumed, has carefully worked out the budget proposals. They are transmitted to the legislature. Let us use Congress by way of illustration. No one who has taken part in the formulation of the budget proposals is in Congress; no one who has the detailed administrative knowledge of the departments is in Congress. Shall they be just thrown into Congress to meet what fate comes to them? Or shall the executive use every secret means and agency to help force the proposals through? Or shall those responsible for formulating the budget proposals be given an opportunity on the floor of the house to defend them and to place at the disposal of the legislature such additional facts and information as the discussion shows need for? In other words the question is frankly raised if the privilege of the floor in the legislature should not be given to the chief administrative officers of the government.

EARLY EFFORTS

In the early years, as the Annals of Congress show, members of the Cabinet did attend legislative sessions, but the custom seemed to be dropped gradually. In 1864 House Resolution No. 214 was a "resolution to provide that the heads of the executive departments may occupy seats on the floor of the House of Representatives." In 1881 a bill (S. 227) provided for similar representation on the floor of the Senate and the House of Representatives. Admirable reports

were submitted by the committees to which this bill and this resolution were referred. (George H. Pendleton was chairman of both committees.)

These early proposals have reference to the right of cabinet members "to occupy seats on the floor of the Senate and the House of Representatives with the right to participate in debate on matters relating to the business of their respective departments under such rules as may be prescribed by the Senate and House respectively." Though the right of the administration to discuss general matters relating to their departments may be connected with the budget, our present interest is in this right as it relates to the budget proposals of the administration.

These early proposals wanted to give to the cabinet officers the privilege of the floor. In these later days an extension of this privilege will be required. The establishment of agencies such as the Federal Reserve Board, the Federal Trade Commission, and the Interstate Commerce Commission makes necessary an extension. These agencies are not represented adequately or even partially by any of the secretaries. For the same reason that they must submit separate estimates, they or the chairman or manager of these commissions ought to be extended the privilege of the floor. The same situation exists in the states where there are genuine administrative commissions, e. g., the Wisconsin Railroad Commission or Industrial Commission.[1]

With the systematic organization of budget pro-

[1] By the same reasoning that the right of the floor ought to be extended to administrative officials, the same privilege should be extended to a representative of the judiciary.

cedure as proposed in this book, the proposals as they come to the legislature have a known father. Ordinarily executive proposals are smothered in illegitimacy, and only the gossip of the lobbies makes known the real facts. The public is hardly ever really "let in" on the facts. But in thus giving the executive definite opportunity to make proposals or rather requiring him to make proposals, he should not be left to present methods of having them carried out.

These methods are aptly described in the Congressional report of the bill introduced in 1881 and are exactly descriptive of the situation in Congress to-day and in our state legislatures. The report says:

"It has been notorious for years that by personal interviews with Members, by private conversation at the office, in social intercourse at casual meetings on the floor of the two Houses, by verbal statements to the chairmen of committees — liable always to be misunderstood or even misrepresented — by unofficial communications to the committees themselves, these officers originate, press forward, modify, or entirely defeat measures of legislation; and it has often happened that the rules of the House have been violated by stating what has occurred in committee, in order to convey to Members the opinions or wishes of a secretary.

"These officers have no authorized communication with the committees or the House. Their suggestions, even if in writing, are not recorded. No trace of their exertions is left behind. They work, they accomplish, and yet after a few weeks, or even after a few days, it would be difficult to show, although Members were fully conscious of it, that they had produced any effect as to particular measures or even what their opinions were in relation to these measures. Their secret, silent, omnipresent influence is felt, yet they are without responsibility. It is not necessarily corrupt because

it is secret and silent; but it may be; and wherever opportunity for corruption exists there will be, there ought to be, suspicion and distrust." (Privilege of the Floor to Cabinet Officers, Reports made to Congress, 1913, pp. 18–19.)

Another important result has been noted by Justice Story in his Commentaries on the Constitution (Sec. 869 et seq.). It is that under the present arrangement "the executive will never be compelled to avow or support any opinions. His ministers may conceal or evade any expression of their opinions. He will seem to follow, when, in fact, he directs the opinions of Congress. He will assume the air of a dependent, when, in fact, his spirit and his wishes pervade the whole system of legislation. If corruption ever eats its way silently into the vitals of this Republic it will be because the people are unable to bring responsibility home to the Executive through his chosen ministers. They will be betrayed when their suspicions are most lulled by the Executive under the disguise of an obedience to the will of Congress." Instead of the word "Congress" substitute the word "legislature" and we have an accurate description, for example, of what repeatedly happened in the 1915 Wisconsin legislature and of what is happening frequently in other state legislatures.

And in the light of these facts, easily verifiable by the careful student in any legislature now meeting, is it not natural that the Congressional Committee who studied the question should ask:

"Would it not be better that their opinions should be expressed, their facts stated, their policy enforced, their acts defended in open day on the floor of the House, in the face of the Nation, in public speech, in official, recorded state-

ment, where there can be no hidden purpose, no misconception, no misrepresentation?

"This would enlighten the House, inform the country, and be just to the officer. It would substitute a legitimate for an illegitimate power. It would establish an open, official, honorable mode of exercising that power instead of a secret unrecognized mode, liable to abuse, and therefore always subject to the suspicion that it has been abused. It would establish authorized and accurate instead of unauthorized, and therefore uncertain and inaccurate, communication with the House." (Privilege of the Floor to Cabinet Officers, Reports made to Congress, 1913, p. 19.)

CERTAIN OBJECTIONS

Two constitutional objections are made to the plan which, however, are easily disposed of. One is based on the provision that no person holding any office under the United States shall be a member of either House during his continuance in office.[1] The answer to this objection is that it is not proposed to make the administrative officer a member of Congress. It is merely a proposal to admit, under the constitutional provision that each house may determine the rules of its proceedings, certain persons to the privilege of the floor without the right to vote and without the immunities of Congressmen.

[1] "The provision of the Constitution, that 'no person holding any office under the United States shall be a Member of either House during his continuance in office,' is in nowise violated. The head of a department, reporting in person and orally, or participating in debate, becomes no more a member of either House than does the chaplain, or the contestant, or his counsel, or the Delegate. He has no official term; he is neither elected nor appointed to either House; he has no participation in the power of impeachment, either in the institution or trial; he has no privilege from arrest; he has no power to vote." (Privilege of the Floor to Cabinet Officers, Reports of the U. S. Congress, p. 5.)

The other objection is in substance that the proposal is a violation of the principle of the separation of powers. The report of the Committee already referred to entirely disposes of this objection.[1] Rather than being an objection it does what President Taft very aptly says it does: "It would only facilitate their coöperation in the public interest." (Message of the President of the United States, 62d Cong., 3d sess., No. 989, 1912.)

A SOUND BASIS

This proposal for a "free open candid consultation" between administrative and legislative authorities rests

[1] "Your committee is not unmindful of the maxim that in a constitutional government the great powers are divided into legislative, executive, and judicial, and that they should be conferred upon distinct departments. These departments should be defined and maintained, and it is a sufficiently accurate expression to say that they should be independent of each other. But this independence in no just or practical sense means an entire separation, either in their organization or their functions — isolation, either in the scope or the exercise of their powers. Such independence or isolation would produce either conflict or paralysis, either inevitable collision or inaction, and either the one or the other would be in derogation of the efficiency of the government. Such independence of coequal and coördinate departments has never existed in any civilized government, and never can exist.

"The Constitution of the United States wisely distributed the powers of the Government, and with equal wisdom most carefully provided for the harmonious coöperation of the several departments to which such powers were confided."

And again:

"If there is anything perfectly plain in the Constitution and organization of the Government of the United States, it is that the great departments were not intended to be independent and isolated in the strict meaning of these terms; but that, although having a separate existence, they were to coöperate, each with the other, as the different members of the human body must cooperate with each other in order to form the figure and perform the duties of a perfect man." (Privilege of the Floor to Cabinet Officers, Reports made to Congress, 1913, pp. 6, 8.)

upon two simple propositions. In the words of the Committee they are:

"First. That it is the duty of Congress to avail itself of the best possible means of information in relation to the measures of legislation on which it may be called to act.

"Second. That the influence of the executive department upon the legislative, whatever it may be, should be open, declared, and authorized, rather than secret, concealed, and unauthorized."

THE RESULTS ON THE ADMINISTRATION

Besides facilitating the coöperation of the legislature and the executive in the public interest, the presence of representatives of the executive departments on the floor of the legislature has very important reflex influences on the administration. It may be summed up in the phrase that it puts the administration on its mettle. The possibility of having to explain in such a public manner as here provided would make any public officer alert and watchful. It would spur the principal administrators to give closer attention to what was actually happening in their departments. They would keep currently informed on needs instead of cramming in the information at the time of the preparation of estimates. They would be more interested in the public's attitude and would take greater care to avoid just criticism. Finally it would affect very much, indeed, the kind of men who were selected for the higher and highest administrative posts.

But let it be repeated that from the standpoint of budget-making the major advantages of the plan are:

(1) The legislature has at its immediate command

the best available governmental knowledge and experience — and has it available in a way that will make it valuable in formulating effective public opinion, and

(2) The backstairs and subterranean channels of influence of the executive are made unnecessary, and such influence as the executive wishes to exert may be exercised in an open, declared and authorized way, and

(3) Possible misunderstanding between legislature and administration may be averted because of the possibility of immediate correction of misstatement, misinformation or wrong conclusion.

VI. ORGANIZING CRITICISM

(a) Giving Minority Machinery for Collecting Information

A great deal of the value of the so-called budget system depends upon what happens to the budget proposals after they leave the executive, i. e., in the legislature. This book accepts the point of view that the budget proposals ought not to have any strong presumption in their favor because of their source, but should stand or fall on their intrinsic worth. Hence the importance of the amount and quality of the budget discussion. One of the fundamental troubles with the national scheme of appropriating money is what happens to the estimates sent to Congress. From what happened to the recommendations of President Taft, the same thing would happen to revised estimates by any President himself. What does happen to these estimates? They are sent to the Appropriations Committee and are transformed by some occult process — occult to the public — into the various appropriation bills. There

may be hearings, but these do not receive adequate publicity. The stage is not set for it. The process being admittedly preparatory, the real work going on behind closed doors, the conditions for inciting public interest are not present.

But what happens to bills after they are reported to the legislature is more significant. The writer has seen bills appropriating millions of dollars presented to a legislature a few hours before final adjournment and passed without any knowledge by most of the legislators of any of the provisions of the bill. He has seen one appropriation bill after another introduced into a legislature in the orgy of a last night because "the boys" had to go home. It is this abdication of authority by the legislature that must be corrected. If the budget system is going to mean anything, and the fundamentally democratic character of our government is to be maintained, then the deliberative character of our legislature, particularly on budget matters, must be restored.

It is this condition which Frederick A. Cleveland, for example, accepts and makes the basis of the demand for the so-called "executive budget." It is presumably for this reason that he says that all the legislature can be anyway is a ratifying agency, ratifying the suggestions of the executive or of its own committees. But the conditions of Congressional legislation [1] are apparently designed to prevent genuine discussion by means of King Caucus, by means of the calendar as at present manipulated, by means of the rules. The manipulators

[1] This is less true of the Senate than of the House.

of Congress want to make it a ratifying agency. A new insurgent movement is needed badly.

In the present organization of our legislatures the majority may be ruthless. Very rarely does the minority or the minorities have any rights which the majority feels found to respect.[1] Particularly since the caucus has been called so frequently into play, this tyrannical use of the power of the majority is augmented in great measure by what Bagehot calls the mechanical character of the majority. A mechanical majority is a majority that registers practically automatically the judgments of its manipulators, or if you prefer, of its leaders. Nothing can be worse for government than a mechanical legislative majority because in it virtually rests the sovereign power and through it we become not a democracy but an autocracy, not a representative government but an oligarchy.

"Mechanical" describes our governmental machinery rather accurately. We have four year terms for presidents and two year terms for Congressmen, come what will. The whole tendency of our organization is to sanctify routine — is machine-like. Disturbing factors — the possibility of new elements — are subordinated to the ordinary run of things. The governmental machine is to a considerable degree self-sufficient, or, at any rate, the possibilities of bringing into the legislative and administrative arena new forces, fresh points of view and additional information are not realized.

The legislative assembly of the nation or of a state

[1] Filibusters in the United States Senate being the exception that proves the rule.

offers the background for action, however great. Yet it really never reaches the people and is rarely the subject of first page publicity. A robbery of five thousand dollars' worth of jewelry from John Jones' house gets ample publicity, but a legislative robbery of millions via the pork barrel goes unmentioned. And this is characteristic. Examine the Congressional Record, — that morgue of eloquence and "hot air," of sound information and of unadulterated misinformation, of good sense and sheer nonsense — and you will find to what extent valuable public information — the wheat among much chaff — is neglected by existing publicity methods.

The real trouble is that the legislative discussion is not properly stage-managed. Ordinarily a legislative majority, as determined in the caucus, is going to record its predetermined decision. The process has little interest. And that brings us to the present point: the minority is practically disfranchised. Criticism of the majority is not encouraged, and surely the rules do not stimulate such criticism. And right here the American people may safely borrow a principle from Great Britain. Bagehot has pointed out that the English government was the first government which made "criticism of administration as much a part of the polity as administration itself." (p. 87.) This was done by utilizing the minority in the public interest.

There must be in Congress and in the state legislatures enfranchisement of the legislative minority. It must be utilized in budget-making as an effective agency for the criticism of the administration. But in order that this machinery may be effective the minor-

ity must have at its command at governmental expense the machinery of investigation so that its criticism may be intelligent and effective because it has access to all the information the majority has.

This could be done by organizing a Committee of the Minority, made up entirely of minority members selected by the minority, provided with adequate power of investigation and with an adequate staff protected by continuing appropriations. Such a committee would put the administration on its mettle. If the legislative majority was opposed to the administration, it would provide machinery for its legislative sympathizers to organize for the discussion *without putting too great a strain on the routine administrative machinery.*

(b) Minority Questioning of Administrative Officers

Perhaps of more importance even than giving the minority control of a committee on accounts with ample staff and authority is the right of a member of the legislature or a group of members to require the presence of an administrative officer before the legislature to be questioned on any phase of the work of his department. We are not now concerned with the effect of such a practice in making the administration alert and in preventing all those evils of bureaucracy which we very properly fear and deplore. We are interested in it as furnishing to the critics of the administration and of the budget proposals the opportunity of raising the issues created by the budget proposals and to get specific and authoritative statements from responsible officers as to the exact meaning of each part of the budget program. Moreover, it makes the ac-

count of stewardship for past fiscal periods in a sense personal and effective to a degree that is not possible under any other legislative device.

This right of question or interpellation, as it is sometimes called, is a very valuable and almost indispensable supplement to giving the minority the machinery, staff and power of investigation. It is the fruition of this power of investigation. It can be easily imagined how the keeping of records may be manipulated to conceal as well as to reveal information. That public records have been kept with that purpose in view has been frequently shown. In the examination of such records many a mystery would be solved by securing answers to simple questions by administrative officers. But in American legislative procedure it is not now possible for a minority to secure such an answer. In many cases it is not possible for the majority to secure such information if the public official is not obliging.

Apart, too, from the question of what is the fact, there is oftentimes the more important question as to what is the meaning of the facts. Then there is the human element which may be decisive in administrative acts and which hardly ever gets recorded unless in private letter or conference. The right of a minority to question is a means of getting into the public records and getting additional information such as would never be revealed by a mere examination of accounts or by voluntary testimony.

The audience of a legislature ought not to be merely its own membership, but the nation. The right of "question" makes this possible more frequently than any other means because it dramatizes the conflict.

And in the dramatization of the conflict is the news value. A nation the next morning reads on the first page of its newspaper the story of the legislative struggle in terms it can understand. Let us see the process. The English procedure has been succinctly described by Sir Courtenay Ilbert, Clerk of the House of Commons, as follows:

"Any member has the right to address a question to any minister of the crown, being also a member of the house, about public affairs with which he is officially connected, or a matter of administration for which he is responsible. The proper object of such a question is to obtain information on a matter of fact within the special cognizance of the minister, and the rules and practice of the house limit the right to ask questions so as to confine them to this object. The practice of putting questions to ministers developed rapidly during the latter half of the nineteenth century and tended to occupy so much time that restrictions became necessary. Under the existing rules notice of any such question must except in special cases, appear on the notice paper of the house at least one day before the answer is to be given, so that the minister may have time to prepare his answer. If a member wishes his question to be answered orally, he marks it with an asterisk, and a period of about three-quarters of an hour is set apart on four afternoons of the week for the answering of such questions. During that period supplementary questions may be asked within limits determined by the Speaker, but no debate is allowed to arise, and in this respect the English practice differs from the 'interpellations' of the French chamber. A minister cannot be compelled to answer a question, and sometimes declines to do so on the ground of public interest. It is for him to determine what kind of answer is likely to be considered proper and sufficient in the circumstances of the case. An unsatisfactory answer may give rise to a motion for adjournment of the house, which, under one of the standing orders, is

the technical mode of obtaining a discussion at a later hour of the day. But such a motion is not allowed unless the matter to be discussed is a 'definite matter of urgent public importance,' and the Speaker is strict in his interpretation of this rule. The answers to 'unstarred' questions, and to 'starred' questions for which time cannot be found within the allowed period, are circulated to members subsequently." (Sir Courtenay Ilbert, "Parliament, Its History, Constitution and Practice," pp. 112–113.)

This same process has been introduced in America for the first time in the state of Wisconsin in a very cautious way. A bill was introduced in the 1915 legislature giving a small group in the legislature the power the individual member has in England. This bill was defeated, but attached to a bill creating the Conservation Commission, its essential provisions were added so as to apply to this single commission. In a revision of the chapter on the legislature (Chap. 634, Laws of 1917) the 1917 legislature made the provisions of this law generally applicable to appointive officers. The provisions of the 1917 revision are:

"Section 23. (1) Upon the petition of six members of the senate, not more than four of whom shall belong to the same political party, or of seventeen members of the assembly, not more than nine of whom shall belong to the same political party, any appointive state officer shall appear before that branch of the legislature to which the petitioning members belong, to answer written and oral interrogatories relative to any matter, function, or work of such officer, or relative to any act or omission, or other matter pertaining to the powers or privileges exercised or duties performed by him or by any employee or subordinate of such officer, or in any way relating to the manner, conditions or terms of his appointment, or of any appointment made by him; or in

relation to any act, omission or conduct unbecoming the position of any such officer. Such petition shall be in writing, shall be accompanied by written interrogatories, shall be signed by the petitioning members, and shall be filed with the presiding officer of that branch of the legislature to which such petitioning members belong.

"(2) Upon the joint petition of six members of the senate, not more than four of whom shall belong to the same political party, and seventeen members of the assembly, not more than nine of whom shall belong to the same political party, filed with the presiding officer of the senate, requesting an examination of any appointive state officer made subject thereto by subsection (1) before a joint session of the two branches of the legislature, such officer shall appear before such joint session and answer written and oral interrogatories as to any matters included in subsection (1).

"Section 24. (1) Upon the filing of any petition, as prescribed by section 13.23, the presiding officer with whom the same is filed, shall forthwith fix a time not later than twenty days after the filing of the petition, for the meeting of that branch of the legislature, or the joint session of the legislature, as the case may be, before which such interrogation and examination shall be held. A notice of such meeting, together with a copy of the written interrogatories, shall be forthwith delivered to the officer named therein.

"(2) The legislature may adopt rules and regulations to govern such examinations. All proceedings, including all questions and answers, shall be fully recorded and a copy thereof shall be transmitted to the governor within thirty days after the close of the examination."

Apart from the fact that the number of members required might very well be cut in two, the provision that not more than a certain number must be of the same political party is inadvisable. In many states only Republicans and only Democrats are elected, and

such a provision would prevent the effective use of this means of legislative control because of the difficulty of securing members of the majority. Members who did would probably be stigmatized as entering into an "unholy alliance"— unholy, let it be added, from the political and not from the public point of view. In Wisconsin such a provision is not likely to really restrict the use of such an agency because of the presence of Socialists in the legislature and because of the rift in the majority party into Progressives and Stalwarts. It would be comparatively easy to secure members of the majority joining with minority groups to secure such information. Of course in any state of factional political strife such a provision would operate. And it would operate just as well and more constructively in a state where party loyalty did not mean much in the face of a public interest.

It must not be thought that there is no need for permitting "interpellations" if there is executive representation on the floor of the legislature with the right to speak though not to vote. Entirely different objects are aimed at by these devices. The latter aims at giving the administrative agencies of government the opportunity to place fully before the legislature their case, presumably in its best aspects. The former aims at compelling the administrative agencies of government to supply the legislature, on the initiative of a single member or a small group, information which it has not voluntarily placed before it, or of which it did not see the need, or that has grown out of its own administrative action. In the interest of genuine discussion of

the budget proposals, both of these means of stimulating discussion ought to be utilized. Neither serves the purpose of the other.

SUMMARY

Perhaps the greatest legislative reform needed and one which includes all the lesser ones is to make our legislatures genuinely deliberative bodies. The recommendations made with reference to legislative organization are made largely with reference to making the machinery of legislation subordinate to the ends for which it is devised. The legislative organization proposed in the preceding chapter "clears the decks for action."

But how can an effective legislative consideration of budget proposals be secured? It can be secured by formulating the budget questions to the legislature in such form as will secure pertinent discussion. The vast array of information must be organized primarily with reference to the legislative declaration of policy. This is secured by organizing the information about services-to-be-performed, and similar or related services should be organized with reference to their coördination irrespective of the fact whether they are assigned to different organization units. The appropriations will actually be made to departments but will be made for services-to-be-performed, that is, in terms of functions. Objects of expenditures, such as personal services and supplies, have primarily administrative significance and are important in this connection only as supporting data.

In order that this coördination of services or func-

tions may be guaranteed, the budget proposals must be presented to the legislature as a whole. But this does not require that the budget act shall be passed in a single bill. So long as the complete budget proposals are before the legislature the separate departmental or service bills can be fitted into the program. Or what is the same thing, the legislature can come to tentative agreements on the separate services as the consideration of the budget proposals progresses, and it can then finally pass the budget at the conclusion of the consideration.

But time must be allowed to permit adequate discussion, and the rules must be formulated in the interest of discussion. Opportunities for rushing legislation through must be curtailed. And for these reasons it is urged: (1) that legislative sessions should be for unlimited periods; (2) that rules reform should proceed in the direction of permitting adequate discussion; and (3) that for the present and because of the difficulty of organizing and mobilizing a real national or state public opinion the bicameral character of the legislature should remain unchanged.

These three recommendations are further means for permitting adequate discussion. Adequate discussion will be secured if the legislative consideration of the budget proposals at all stages is a public discussion and if the public actively participates in budget-making both directly in the committee of the whole and indirectly in organized effective public opinion to help the legislature arrive at its decision. Public and adequate discussion of the budget proposals will be secured if the opposition is used as an agency of criticism and if the ad-

ministration is used as an agency of exposition and of defense. The latter will be accomplished by giving the principal administrative officers the privilege of the floor without any right to vote; the former will be accomplished by giving the minority machinery to collect information and the right to question administrative officers about their activities and their duties and to receive answers, or in other words, to give the minority the right of interpellation.

CHAPTER IX

THE PORK-BARREL PROBLEM

"We have a crooked creek, that has a crooked name,
And grabs a crooked million while in a crooked game;
To make a crooked water power run up a crooked hill,
It crooks your Uncle Samuel through a crooked river bill."

BUT the greatest legislative problem in connection with the budget is pork. This problem arises from the very make-up of Congress. Five hundred and thirty-one Congressional districts of the United States send five hundred and thirty-one men to Congress. There is no unifying force in Congress, no dominant force. Much of the major appropriation bills is merely the compromises of these local interests to get as much as they can for the people "back home" irrespective of the actual needs of the situation.[1] National interests

[1] The point frequently made that the North is paying the major part of the taxes and getting the minor part of the appropriations and the South is getting the major part of the appropriations and paying a minor part of the taxes is not discussed in the text. It hardly deserves discussion. In February, 1917, in a debate in the United States Senate, Senator Smith of Michigan raised the point, and Senator Sheppard of Texas replied conclusively: "Any criticism of Texas comes with ill grace from the senator . . . because we have sent more money into Michigan for Ford automobiles than Michigan ever contributed to the Federal Government above appropriations received." In other words, the consumers generally distributed over the United States are bearing the burden of taxation, and not the producers localized in certain parts of the country who pay the taxes to the government.

are sacrificed for local, sectional or personal interests. Congress speaks not so much as a national assembly but as a loose aggregation of representations from all parts of the country to secure the best they can at the political bargain counter. These "bargains" secured for the people back home are familiarly referred to as pork. The appropriation bills carrying these appropriations are known as pork-barrels.

It is a common practice to refer to the river and harbors bill as *the* pork-barrel. Sometimes the public buildings bill is used as the best example of the pork-barrel. But the army and navy bills are reeking with pork, and it may be found in many unexpected places, for example, the tariff. The tariff as we know it in this country is merely another scheme for the distribution of favors largely to the manufacturers of this country. A nice sectional balance is maintained. So competent a scholar as Professor Taussig of Harvard says:

"Tariff bills are inevitably dealt with as are river and harbor bills and general appropriation bills. The only way in which a desired result can be brought about has been

Senator Hardwick of Georgia in the same debate said: "If any appropriation that has been made for Georgia is wrong, fight it on its merits, and you will not find me defending it if I think you are right. If any appropriation that is made for Texas is wrong, fight it because it is wrong, not because it is for Texas, and I believe you will find the distinguished and able senators from Texas agreeing with you if they believe you are right. But this proposition — narrow, infinitesimally small, unutterably little — of taking any state in this Union and saying: 'Oh, this State got so much money and paid so much taxes,' is one that will not appeal to the good sense of the American people." (Cf. *Collier's Weekly*, Feb. 10, 1917, and Congressional Record.)

through the influence of individual legislators and in the traditional ways. We cannot escape log rolling, private interviews with influential politicians, settlement of details in quiet committee meetings."

And former Secretary of War, Henry L. Stimson, said:

"Tariff legislation, instead of being the great national instrument for upbuilding the industries of the country, which Alexander Hamilton proposed, has long been carried on as a systematic series of deals between various manufacturing districts, and the hostility of Congress to a more scientific method has been recently illustrated by its abolition of the Tariff Commission, which was seeking to raise tariff-making to a more national standpoint."

THE PROCESS OF SECURING IT

One of the greatest national services performed by a Congressman is the exposé of pork-barrel methods begun in 1913 by Mr. James A. Frear of Wisconsin. He has described the pork process in these words:

"Dredgers, contractors, and other beneficiaries want work for private profit. They start things and urge local communities to get something from the Government for nothing. The local commercial or boosters' club, aroused to action, says to Representative Gettum from Grabville, 'Bring home the money or don't come back.' Every Representative is confronted with the utterance of Ellison, secretary of the $50,000,000 waterway lobby, 'Get what is asked or get out.' So Representative Gettum begs the committee for a local survey. The committee shifts responsibility by putting the project up to Army engineers for approval. The engineers survey and reject. Mr. Gettum shouts for help and reëlection while engineers reëxamine Mud Creek and again repudiate

the job. Under pressure he then corrals his state delegation, reaching to nine Congressmen and two Senators in the Cumberland River case. Statesmen show Army engineers where to jump off. The board reflects; the board sees new light and somersaults and approves. Then Mr. Gettum presents his approved contract to the River and Harbor Committee. Our committee finally agrees with Gettum — who has nine votes in his pistol pocket with two more in the upper watch pocket — and so we eat persimmons, declaring them good though puckery. Solemnly we are now pointed to the engineer's approval, and all doors to legislative criticism thereafter are forever closed. We pretend to expect that our subordinates, the engineers, will withstand pull, pressure, and power. Constituencies, animated by secret agencies, seek questionable aid from their Representatives, and we pass it on to the engineer. How does he acquit himself?" (Speech of Rep. Frear, Cong. Record, p. 1123, Jan. 10, 1916.)

Representative Fitzgerald has very aptly described the pork-barrel with reference to public buildings in these words:

"This is what happens on public buildings in the Federal government: Suppose I represent a community or district which has no large city, perhaps the largest town in it may be twenty or fifteen thousand. I may have one or two communities like that. And none of them has a public building; but across the line in some other district, the town of equal size has a public building that cost $50,000 or $75,000. Now, I am a candidate for office and I go in that town and in my speech I announce that I propose to have a public building put there. In most of these places, unless you have a good-sized city, a thousand dollars furnishes ample funds for postal facilities, and they have an authorization to buy a site. And they pay New York prices out in the sage brush country for lots, and the government buys post offices. And then, in a community of eight or nine hundred, based

upon the theory that there is a tremendous postal business, they will authorize a building for $50,000 — nothing less than $50,000 and up. Then, in order to get a better building, a member of Congress will pass a bill providing that there shall be a term of court held in this town, and maybe the court — the Federal Court — will sit there three terms a year, and maybe it will take two days each term to do all the Federal Court business in the town; and then because a Federal Court is to sit at that town, they need a court room and additional facilities and they increase the amount to be expended in the building and some other governmental activity will be provided, and the result is that you can go all over the United States and find buildings costing from $75,000 to $150,000 in communities ranging from one thousand to five thousand people." (Budget Systems, p. 325.)

Perhaps some concrete illustrations will help in understanding the process.

Mr. Jones is sent to Congress from Wyoming. He arrives in Washington with the best intentions in the world. Evanston, Wyoming, wants a post office or a real waterway where the creek is. Local manufacturing concerns are interested and begin writing letters. The local chamber of commerce adds its words of approval. A delegation calls on him. By this time any good intentions he had of not prostituting his high office have "gone to the winds." [1] He gets into the legislative scramble. Smith, under pressure from Kalispell, Missouri, and Brown from Chickasaw, Oklahoma, have done likewise. Let us suppose that this

[1] How great the pressure is indicated by the fact that a Congressman like William Kent of California succumbs even with modifications: "These buildings inculcate a spirit of patriotic pride which is not measurable in dollars and cents. They remind the people of the glory, the majesty and the power of this great republic." (Cf. also World's Work, April, 1916, p. 601, ff.)

particular scramble is the public buildings bill. These Congressmen and others engage in the regular legislative "backscratching" process, and the bill is reported in with the following items:

Evanston, Wyoming	$185,000
Chickasaw, Oklahoma.....	150,000
Kalispell, Missouri.....	115,000

To be sure you have never heard of these places, but they may be thriving, throbbing cities in a section of the country very remote from you. But let us briefly find out some information about them. We are told:

"There is Evanston, Wyoming, a town of 2,500 people, with a federal building that cost $185,000, where court is held two days in the year. Chickasaw, Oklahoma, has in course of construction a $150,000 postoffice, and Kalispell, Missouri, one that will cost $115,000. The mail business of both of these places has been carried on in quarters that the department rented for $1 a year!"

The next step in the game is to be sure that the people back home know of the great service the Congressman rendered to the — no, not country, but to the district. So we find among words sent back to their constituencies such gems as this by Senator Gore:

"I had hoped to see you personally and to account face to face for my stewardship. I was detained in Washington by the Indian Appropriation Bill. As reported by the Committee to the Senate, this bill carried six or seven millions for Oklahoma. I could not get my consent to leave my post of duty until I had made every effort to bring this golden tide into our state.

"I felt that I ought to sacrifice my own interest rather than sacrifice the interest of my people.

"My length of service and committee assignments helped me materially in accomplishing the foregoing results. In the Senate seniority counts." [1]

And this by Senator Ashurst:

"Glad to hear from you. I could name a hundred things, but will give you some of the most important. We have secured $500,000 for public buildings in Arizona; $400,000 for the survey of public land; $200,000 for bridges in Arizona; have shown up how the robber tariff taxes the poor man and lets the rich escape; passed over one thousand pension bills; have secured recognition for the initiative and referendum; helped elect Woodrow Wilson, President, and, last but by no means least, beat Sloan for Federal judge." [2]

And so is the vicious circle completed.

But sometimes the circle isn't completed, as when Congressman Frear writes to the Bronx Board of Trade, New York, in these words:

"I thank you very much for this expression of your board. It emphasizes more strongly than anything I have yet found the willingness of high class men to vote away millions of dollars in money on wasteful projects in order to get a $200,000 appropriation for Diamond reef in New York harbor.

"This resolution asked me to vote for a bill that includes $1,750,000 for the Missouri River, which project, when completed, is to cost the government over a million dollars a year for maintenance, without any substantial return.

"You ask me to vote for a bill which contains $5,500,000 for the Ohio River, although the commerce of that river

[1] Cf. *Collier's Weekly*, Jan. 29, 1916.
[2] Ibid.

does not reach 2 per cent. of the commerce carried by New York harbor. . . .

"Your resolution is intended to influence sentiment in favor of that bill, in order to get support for this one item. It is the method pursued by every pork-barrel supporter in the country, and no change in present methods can be reached until your organization and others of equally high standing realize to what base uses such resolutions can be put." (Chicago *Daily Tribune,* March 15, 1916.)

But perhaps more significant than this is Senator Tillman's revulsion at the whole business. He is tired of it and exasperated. He renounces his former saying: "If you are going to steal, let us divide it out and do not go to complaining." Referring to this utterance, he said:

"I do not want my share of stealing in this bill, and while South Carolina has items in it amounting to $300,000, I shall vote against it and hope it will not become a law. We need the money so much for more important things that to my mind it is criminal to hesitate for one moment to discuss this bill at all." (Chicago *Tribune,* May 21, 1916.)

SOME ACTUAL RESULTS OF IT

And what do we find to be the actual results of these waterway improvements, for example? That indefatigable student of the subject, Mr. Frear, has put the facts succinctly for a number of these projects, and his statement is quoted:

With reference to the Mississippi River as a whole:

"Nearly 20 per cent. of the entire $850,000,000 expended by Uncle Sam for rivers and harbors, or about $150,000,000 has been thrown into the Mississippi River alone, while actual commerce on the river has dropped to 5 per cent. of the traffic recorded 50 years ago, when Government expendi-

tures on the river were unknown." (Congressional Record, Jan. 13, 1916, p. 1124.)

Of the ten mile stretch from St. Paul to Minneapolis, he says:

"The fact is notorious that after 20 years' improvement and an expenditure of over two and one-half million dollars on this 10 mile stretch of river not one ton of commercial freight has ever been hauled from St. Paul to Minneapolis or from Minneapolis to St. Paul by river, nor has a solitary lonesome passenger ever taken the trip on an excursion boat or otherwise in the recollection of the oldest inhabitant." (Congressional Record, Jan. 13, 1916, p. 1124.)

An illuminating table tells the story of Red River:

	Obstructions removed	Commerce Tons
Upper Red (1912)	51,492	—
Upper Red (1913)	51,529	252
Lower Red (1912)	58,039	—
Lower Red (1913)	78,982	1,442
Total	240,042	1,694

(From Cong. Record, Jan. 13, 1916, p. 1124.)

But why prolong this list of engineering follies produced by a system of "ingratiating humbuggery"? And to list the small towns all over the country that have public buildings which "make the landscape look shabby" would be needless repetition of this lesson of criminal prodigality.

ANOTHER RESULT

But this waste of public money for these "humbugs and steals" is not the worst result of a system of "legislative kleptomania." The worst result is the blunting

of legislative sensibilities. If the trading of votes on the single bill were the limit of the pork bill, if we agreed to vote for the bill because I got a post office at A, and you got one at B, and Smith got one at C, the system would be bad enough, but it would be venal. It would be merely a money waste. But when votes on substantive legislation are exchanged for pork-barrel votes, there is introduced a canker into the very heart of the American government. And party manipulators operating in the legislature and in the lobby use the pork-barrel for just such results.

THE MOTIVE POWER OF IT

Private interests in the first instance try to get the machinery of the pork-barrel operating. "Private water powers, private land reclamationists, private real estate schemers unite with dredgers, contractors, and other notorious waterway lobbyists in demanding money at the expense of the public purse." (James A. Frear, Cong. Record, Jan. 13, 1916.) But to succeed in their plan, Congressmen are absolutely necessary. And the part of assistance in securing reëlection or the threat of opposition is the efficient motive force of the pork-barrel. Reëlection is to be the reward, and defeat is to be the punishment of those who do not obey the behests of the pork-barrel lobby. Captain Ellison's ultimatum may be repeated in this connection: "We send Congressmen here to legislate for the Nation, theoretically, but actually to get all they can for us, and if they do not get our share, and then some, we do our best to replace them." (Cong. Record, Jan. 13, 1916, p. 1147.)

The refreshing case of Representative W. Frank James of the twelfth Michigan district is an excellent one: "He has done several things," says the Chicago *Herald* (May 15, 1916), "which violate all the traditional rules of conduct for a Congressman who desires to keep on being one." A Senate bill was introduced providing for a federal building in Mr. James' home town, Hancock. And instead of introducing a similar bill in the house, Mr. James wrote home that he would not introduce such a bill and would not vote for it unless the Treasury Department should certify after due investigation that a federal building was really needed in Hancock. "Whereupon," the news story runs, "a large number of his colleagues of the House told Mr. James that he was a very foolish person." In an interview Mr. James puts the case very well:

> "I have made up my mind if I had to be a pork hunter to stay in Congress I would keep my self-respect and not try for a reëlection. I have been all through my district, making speeches, declaring my position, asking the people whether they thought I was right or wrong. They seem to think I am right. The result is that I am a candidate for reelection." (Chicago *Herald,* May 15, 1916.)

ALL PORK-BARRELS ARE NOT PORK

Of course it is not presumed here that all of the public buildings bill is pork, nor all of the river and harbors bill. Naturally there are some public buildings needed for the purpose of carrying on the public business, whatever might be said of these buildings inculcating "a spirit of patriotic pride which is not

measurable in dollars and cents," and of reminding the people of "the glory, the majesty and the power of this great republic." It is the fact that the pork-barrel is not all pork that makes it possible. Much needed projects are made to carry frauds and steals — and as legislation is possible only on these conditions, honest men accept it, "eating their persimmons, declaring them good though puckery."

We must as a nation have a public building program, a comprehensive public building program. But such a program must not be a hand-to-mouth program. It must not be carried along by patch-work. It must not be a matter of tinkering. It must not be determined as an incident to politics. It must be determined by the legislature in the light of the public building needs of the nation to carry on the work of the nation. It must keep in mind not only this year's need, but next year's and the year after that and twenty years hence.

So with river and harbor improvement, with the inevitable shipping development, after the war, and with the ever present need for bona-fide river improvement as an adjunct of interstate commerce there is need, too, for a comprehensive program, well financed, and carefully planned, for river and harbor improvement for fifty years hence at least. And for this reason there must be taken out of river and harbor bills everything that "smells of pork." The actual industrial and commercial needs of the nation must be determining here, not political considerations. And it is for that reason that pork is here condemned so unreservedly.

It is the débris that must be removed before solid foundations can be laid for comprehensive national programs will be undertaken for river and harbor improvement, for necessary public buildings, and for necessary programs that are now infected with "pork."

WHAT IS THE REMEDY?

An indignant correspondent to *Collier's Weekly* suggests that Congress ought to set aside $20,000,000 "for graft, specifically and without frills."

Senator Ashurst himself suggests that the remedy for the pork-barrel lies in making it unpopular. How this is to be done deponent saith nothing. The fundamental trouble lies in the electorate itself, and a quality of civic education that would destroy the appetite for pork is the surest permanent remedy. A system of direct taxes might help to initiate the educational process. But both of these suggestions would take us too far afield from our present inquiries.

A "pitiless publicity" would do much to do away with the pork-barrel, particularly in these times of disgust and exasperation by some of the Congressmen and of refusal of communities to accept pork projects. The various remedies that will be proposed in this book have all of them important by-products in the way of publicity. These remedies are: the executive veto, local contribution to national public work projects, a system of election that will make Congressmen more representative of definite public opinion than of locality, the substitution of party for individual responsibility, and administrative commissions. An executive can stop the pork-barrel at any time by executive veto

if he has the courage, even though he cannot remove the causes of it. The plan of local decision and local contribution to national public work projects located in communities is a method of making these things subjects of public consideration in the community and affords new material of quite a different emphasis than similar news at present. The system of proportional representation changes the character of the account of stewardship to be rendered by the Congressman for reelection. And this would affect very much the character of the campaign and newspaper publicity in connection therewith. And the substitution of party responsibility for individual lack of responsibility with reference to budgetary matters is certain to increase publicity because of the larger interests involved. But back of this publicity there must go constructive, technical determination in advance of Congressional action and upon which Congressional action must be based if it is to be intelligent.

All of these subjects will be treated in detail in the succeeding chapter.

CHAPTER X

PORK — THE REMEDIES

ANY president of the United States who will may prevent the passage of a pork-barrel bill. The simple and effective remedy lies in the veto power. Any president who has the courage to veto a pork-barrel bill and raise the question thus publicly would create public opinion that would make subsequent pork items unlikely. A president who would advise the Congressional leaders in advance that he would refuse to approve any bills containing a certain item or items, could prevent their inclusion. This is also true of a governor.

THE EXECUTIVE VETO AS A REMEDY [1]

The existing power to veto the bill would serve this purpose more effectively than the power to veto items. Instead of eliminating an item here and an item there — a power that may be used malevolently just as it may be used beneficently — the veto of the bill raises the issue in a manner to secure public interest because it raises the whole question and not a fragment or fragments of it. It makes use of the governmental issue as an educational means. It makes for a permanent understanding and a cumulative public opinion in which

[1] A broader discussion of the executive veto is given in Chapter XI.

evils are likely to remain corrected and constructive changes permanent. Under a veto of items procedure more pork items are likely to be included in pork-barrel bills so that the responsibility for rejecting them is "put up to" the president. This is a convenient way to shift responsibility to the president and to take the chance that he may leave many items in because perhaps he may need votes for his own legislative program.

Presidents and governors themselves have been interested in having items added to pork-barrel bills. And if the executive is going to raise the pork-barrel question and not smother it through veto of items, he ought to be required to veto the bill as a whole so that the question of his items — if any — may be raised with the others in relation to the whole program of the subject of the bill.

Responsibility for any pork-barrel may be placed squarely on the executive. The executive veto is a blunt way of serving notice on the pork-hunters that he wants none of it. But while it is possible to fix responsibility for individual pork-barrel bills, the system of executive veto does nothing to correct the fundamental legislative and political conditions which make pork-barrels possible. So while pork-barrels cannot pass without presidential connivance, what is needed is a correction of the pork-making process in its earliest stages rather than in its "last phase." These correctives, as already explained, are the subject matter of the remainder of this chapter. They are: local contributions to national public work projects; a system of election of Congressmen based on a practical system of

proportional representation, the substitution of party for individual responsibility and an administrative commission.

REPRESENTING A LOCALITY OR A CONSTITUENCY?

Pork and pork-barrels are the expression of the local character of a legislature, of its lack of social motive. It means that these larger interests are sacrificed for purely local interests. It means that national interests may be log-rolled away to secure "venal wasteful projects" for the district. The legislators must "bring home the bacon."

This system of representation of localities loses sight of a very, very important fact that though sections and places have yet claims in a nation as wide as ours, social and economic questions have overshadowed them. The pork-barrel is tied up rather intimately with the principles of sectional or territorial representation.

The Middle West has a definite meaning in our national politics; the South, too, and the West and the East. Wisconsin has its peculiar significance, and Oregon and Oklahoma. These sections ought to be definitely represented. In the Senate we have accepted on the basis of states the principle of representation of locality. The district represented is sufficiently large to prevent a too narrow localism. The same principle has been accepted in our House of Representatives — the national "ward system" of politics. Here we have subdivided the state into districts that hardly ever have any social, economic or genuinely political cohesion and hardly ever any geographical

significance.[1] Apart from the fact that these districts do not have this social cohesion, they are represented in the national legislature by a single member. Each time a member is elected a part of the electorate is unrepresented. If there are two parties closely contesting, then a little less than half are disfranchised. If more than two members are contesting minority representation is usually the rule, and sometimes disgracefully so.

The single member district sends to our legislatures men who are representative of a certain number of voters, sometimes a majority, oftener a plurality, and not infrequently a minority. The group that is represented is not bound together by any definite political or economic ideas. The politically effective group, as well as the others, is usually a medley.

It is this unrepresentative character of our representatives that makes service as representative a bargain-counter scramble for local projects. "Get something for the district" is the battle cry. But it ought to be definitely understood that there is no imperious public opinion demanding pork. There is no large or small *social* group urging it. It is the battle cry of the contractors and real estate interests of some part of the district. Sometimes it is merely the bait held out by the politically ambitious. Frequently there is no demand from the district whatever, even from local contractors and others. But a fifty-million waterway Congress lobby uses this district appeal as the basis of its propaganda and serves notice in the language of Captain Ellison, secretary of the river

[1] In the practice of gerrymandering it is made to serve a prostitute political purpose.

lobby, as follows: "We send Congressmen here to legislate for the Nation, theoretically, but actually to get all they can for us, and if they do not get our share and then some, we do our best to replace them." (Cong. Record, Jan. 13, 1916, p. 1147.)

This district bogy must be destroyed. Fortunately some cities are destroying it on their own initiative.

But most cities and citizens accept these public buildings, "river improvements," navy yards, and other Congressional perquisites as the result of an occult process which is bestowed upon them, they know not how, and which they are powerless to refuse. The Congressman, they feel, is the "genius" through whom these marvelous results are brought about. But some cities are not imposed upon by such a primitive theory of political action as already noted. But most are under its influence, they know not how.

An election system must be devised which will subordinate locality as a major factor in electing representatives and which will secure proportional representation to substantial groups of public opinion. It is proposed that this be done by the abolition of the single member district and the substitution of a very much larger district which would select at least three members. Each person has one vote, and a candidate is elected who has in a three-member district one-third of the votes. The individual votes are transferable. If a candidate has more than one-third of the votes, those in excess are transferred to other candidates in accordance with the expressed wish of the voter on his ballot. A voter indicates his choice by making the numbers 1, 2, 3, etc., after the names he chooses in the

order of his choice. The numbers 2, 3, 4, etc., are used if the candidate who was voted for as 1 has already the necessary number of votes — the quota. This system of election is usually called proportional representation.

The proportional representation principle through its body blow to the single member district is a very important corrective of the pork-barrel. If accepted and put into practice it would help change our Congress from a local to a national agency. It would illustrate the contrast which Burke put so well in his address to the electors of Bristol: "Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but Parliament is a deliberative assembly of our nation, with one interest — that of the whole — where not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member, indeed, but when you have chosen him, he is not a member of Bristol, but he is a member of Parliament."

Members elected by substantial social groups with a well defined public opinion do not have to bring the bacon home. They have a solid backing in the electorate, and no ultimatum to "get what we ask for and then some or get out" could have any possible meaning. It could not even be uttered. The shibboleth, "get something for your district" would also lose its sinister aspect. The legislator has no district; he has a constituency. And so does the pork-barrel as it is

sustained by the single-member district of (mis)representation lose its foundation.

The account of stewardship which has to be rendered under the proportional representation system is quite different from the account of pork secured by the present representative. How faithfully did you carry out the political opinions of the constituency, not what pork did you get for the district — this is the nature of the accounting that will be required under proportional representation.

LOCAL CONTRIBUTIONS

"Getting something for nothing" is the general view of the elements in a community that are interested in legislative pork. For the general taxpayer everywhere "pork" is merely "green goods." The legislative representative after his first revulsion generally accepts it as an inevitable part of the legislature and takes Senator Tillman's earlier attitude: "The Mississippi itself has quit having any steamboats on it and the whole scheme of river improvement is a humbug and a steal; but if you are going to steal, let us divide it out and do not go to complaining."

The system is continued, too, because a hundred new members every Congress are initiated into it in their ignorance — some do rebel — and with the old guard form a sufficient majority to "put it over."

To get a magnificent new building for the community for nothing, even if it makes the other buildings look shabby, is hardly anything to complain of. No direct tax tells the story of the community's share in paying for it and for similar extravagance in other

sections of the country. That the citizens of the community and other communities are paying for this "bald unmitigated waste" is never driven home to the individual citizen or community.

Perhaps one of the most important agencies in cleansing out the pork blot from our legislative escutcheon would be machinery providing for local contribution to pork projects — waterway improvements, post roads, public buildings or others — and requiring deliberative local judgment as to the need for it. If it could be provided further that the community would back up its judgment as to the need by "digging down into its jeans" and contributing "cold hard cash," then perhaps we might leave a venal pork-barrel Congress to its "venal wasteful projects," and to its making "scientific channels for traffickless streams."

Senator Theodore Burton has given admirable expression to the same thought in these words: "It would seem that the rule can be derived from the experience of states and communities that expenses are most judicious, are most carefully applied to public objects, are disbursed most economically and efficiently when and in proportion as there is an immediate local interest in the use to which they are applied. And in the same manner improvements and expenditures are kept within well-considered limits in proportion as those who immediately bear the burden decide what undertakings shall be entered upon." (Cong. Record, 1904, p. 3295.) But the former point to be really effective must be inextricably bound up with the second, namely, local interest must be deep enough and genuine enough to find expression in local contribution.

A second element, therefore, in the possible solution of the pork-barrel problem is a system of local contribution. In the rural post roads bill, approved by the President July 11, 1916, this principle is accepted. This law provides that the Secretary of Agriculture who is the administrative officer under the act shall notify the State Highway Department or the governor of each state how much is available for federal aid in that state. Then section six of the bill continues:

"Sec. 6. That any State desiring to avail itself of the benefits of this Act shall, by its State highway department, submit to the Secretary of Agriculture project statements setting forth proposed construction of any rural post road or roads therein. If the Secretary of Agriculture approve a project, the State highway department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require: Provided, however, that the Secretary of Agriculture shall approve only such projects as may be substantial in character and the expenditure of funds hereby authorized shall be applied only to such improvements. Items included for engineering, inspection, and unforeseen contingencies shall not exceed ten per centum of the total estimated cost of the work. If the Secretary of Agriculture approve the plans, specifications, and estimates, he shall notify the State highway department and immediately certify the fact to the Secretary of the Treasury. The Secretary of the Treasury shall thereupon set aside the share of the United States payable under this Act on account of such project, *which shall not exceed fifty per centum of the total estimated cost thereof.*[1] No payment of any money apportioned under this Act shall be made on any project until such statement of the project, and the plans, specifications, and estimates therefor, shall have been submitted to and approved by the Secretary of Agriculture."

[1] Italics ours.

Notice how completely federal funds are safeguarded. Thus is a potential twenty-five million dollar pork barrel avoided!

The Committee, reporting in the bill in the House of Representatives, said: "Primarily roads are local concerns and jurisdiction over them belongs to the States and local authorities. This jurisdiction should never be disturbed by the General Government." (H. R. 7617, p. 4.) And it is on this basis that such a large initiative is given to the local government. It is desirable that this is so, but it is not always possible to do so so completely. If military roads were under discussion, such large national projects could not wait upon local initiative or local acquiescence. It is conceivable, too, that even for rural post roads the national government may at times have to step in to maintain or construct roads where a lagging local interest does not or refuses to contribute.

But nothing that has been said, for example, about military roads must be understood as eliminating the possibility of federal and local government coöperating to build highways that may be used as military roads. A state may wish to build a new highway that would be in harmony with a national plan for military roads or could be made so. In such a case every public interest requires the coöperation of all the governmental agencies in the undertaking.

The reasoning of the last few paragraphs applies practically to all public works. The relative interests of national and state or local government vary. In some cases national needs may be so imperious and so controlling that the lesser governmental units can-

not be "waited upon" for approval or contribution. In other cases local interests can be largely controlling. The United States government may be giving fairly satisfactory service. Improved service may be desirable, but not necessary. For the national government to give this improved service at national expense, would be disproportionate emphasis in view of the national situation, but it may do so if the locality really feels the need for it and is willing to contribute one-fifth, or one-third, or one-half, or two-thirds of the cost.

The principle established in the rural post roads law may be applied to other public works — to all potential pork-barrel projects. The size or the proportion of the local contribution is a question of fact to be determined in each class of work or in each project by an expert administrative officer or commission. How such an administrative agency shall be organized is discussed later on in this book (p. 233). But neither of these questions affects the soundness of the principle of local contribution as a matter of public policy.

Though from the point of view of local or state government the local contribution is given on the basis of benefits conferred, the national government accepts a wider point of view than the corollary of the point of view of the state. The local payment for local improvements the national government accepts. But the process by which the local community comes to its decision of the need for additional service or better facilities is more important than the decision itself and the contribution determined upon.

PARTY RESPONSIBILITY AND THE PORK-BARREL

Representative Sherley puts another relation of the pork-barrel — its relation to party government — admirably in these words:

"We are all alike; we live in an atmosphere where a man's success here is essential if he is to live. He does not have the opportunity a member of Parliament has, where he lives or falls with his party. Here every man has to show an individual activity under our present system, and as the result of a spur from behind he is constantly seeking to get something for his particular locality, and until you prevent that by the rules or cultivate a public opinion that will not judge Members by the amount of money they bring home to their districts, you will have the same tendency continued." (Swagar Sherley, In House of Representatives on "A Budget Proposal," p. 23.)

President Lowell has put the positive side of the situation equally well:

"Bagehot has remarked somewhere[1] that the House of Commons has been saved from becoming a collection of delegates from local constituencies by the spirit of deference; but at the present day it is due in even larger measure to the spirit of party. That spirit has prevented the predominance of local interests which is the curse of many legislative bodies." (Lowell, Government of England, Vol. I, p. 514.)

The remedy for the pork-barrel evil through substituting party or majority responsibility for the lack of

[1] "Efficiency in an assembly requires a solid mass of steady votes; and these are collected by a deferential attachment to particular men, or by a belief in the principles those men represent, and they are maintained by fear of those men — by the fear that if you vote against them, you may yourself soon not have a vote at all." (Bagehot, "The English Constitution," pp. 210–211.)

responsibility of the individual member is an effort to substitute group action for individual action. When that has been done, Jones' attempt to get fifty thousand dollars for Mud Creek affects and concerns not only Jones but the membership of the party or group with which he is acting. His insistence on a worthless project and their acquiescence may mean their loss of power at the next election. On such a result following upon decisions as to pork, a sober sense of expediency, if not of honesty, would be cultivated. You introduce thereby a new psychology of legislative action that is more important than any changes in organization. You socialize your legislation.

But there are dangers, too, in substituting this party or group action for individual action. The party or coalition of parties may be welded together on a certain large issue, but on lesser ones they merely vote together for the coalition. And so you get a mechanical majority that merely registers votes but does not think on questions. The result is sectarian government, "the worst of all governments," says Bagehot. But subject even such a party or coalition to effective popular control and you have a corrective that will be effective.

With the lack of any very definite ideas back of parties in the United States and with polar antagonisms in parties as they do exist, no very great gain can be expected from this source, but responsible group action is a decided advance over irresponsible individual action. If party government is combined with the proportional representation electoral plan, very much more can be expected because party groups will

be representative of definite bodies of public opinion, and will be sensitive to its various phases and will feel need for a definite account of its stewardship.

ADMINISTRATIVE COMMISSION

The declaration of public policy is the primary function of the legislature. It is organized to do that. To decide the multitudinous details of administration is not its province. It is not organized to do it, nor is it equipped to do it. To declare that railway rates shall be reasonable is a proper legislative function, but to determine what shall be the specific rates from Chicago to New York it is not organized to do, nor equipped to do, nor has it time to do. That duty the legislature itself has delegated to an administrative commission called in the United States government the Interstate Commerce Commission. In the whole question of public utility rates this differentiation of function has been generally recognized. Perhaps it may be helpful in arriving at a solution of the pork-barrel problem, and for that reason a fuller statement of it may be permissible.

The legislature decides what the public policy is with reference to public utilities: rates shall be reasonable and service shall be satisfactory. It has recognized that it is futile to attempt to determine the multitudinous detailed questions of rates and services. It recognized, too, that the ordinary courts are not equipped or organized to deal with the problem. Questions of law are only incidental. Vast, varied and complex social and economic facts are the determining factors.

The determination of these scientific and administrative questions needs a new kind of public servant and a new machinery to operate through. The New machinery is the administrative commissions; the new public servants are engineers and economists. The members of the administrative commission, in order that they may be free, are made during their term of office independent of minority control of the legislature. This is done through the provision of continuing appropriations, that is, a salary continues until it is changed by positive action of a majority of the legislature. You cannot control the commission through failure to appropriate. You can control it — as you ought to — when a majority of the legislature and the governor want to control it. You thus have public policy declared by the legislature. You have specific determinations under this policy settled by an agency organized to do it, which agency is subject to legitimate legislative control.

Do the questions of the location, size and construction of river and harbor improvements offer such detailed questions for determination as makes it wise for the legislature to delegate the specific determination, under general policies laid down by the legislature and subject to legitimate legislative control, to an administrative commission specially organized to make such determinations?

Do the questions of the location, size and construction of public buildings offer such detailed questions for determination as makes it wise for the legislature to delegate the specific determination, under general policies laid down by the legislature and subject to

legitimate legislative control, to an administrative commission specially organized to make such determinations?

Do the questions of the location, size and construction of navy yards and army posts offer such detailed questions for determination as makes it wise for the legislature to delegate the specific determination, under general policies laid down by the legislature and subject to legitimate legislative control, to an administrative commission specially organized to make such determinations?

Let the first of these questions be examined in some detail, and the others somewhat more summarily. This is done because the first of these questions looms large in the significant contemporary discussion of the pork-barrel.

Congress decides, for example, that the federal government shall stimulate navigation on internal waterways and undertakes a program of river improvement. What rivers or water-courses shall be improved? In what manner shall they be improved? What shall be the depth of the channel? What shall be the width? Shall anything be done by way of reclaiming land adjacent to the rivers? Determination of these questions can be answered only by a multiplicity of facts about the geography and geology of the river; its present commerce and prospects of new commerce, the cost, hauls and other details of competing railroad and river traffic. Then this information must be interpreted and a specific program of improvement suggested with costs of engineering and transportation experts. This responsibilty must be assumed for final

judgment by the legislature or by an agent of the legislature.

Congress has already recognized this need for expert assistance. Reports on river and harbor improvements must be made by the Board of Army Engineers and particularly by the Chief, and projects will be recommended only upon approval of the Board. Such a provision seems quite obviously in the public interest. Let us see how it operates.

The need for a waterway improvement is indicated somewhat by the commercial tonnage, and presumably increased tonnage would follow immediately upon river improvement.

For 1914 the Chief of Engineers allotted a million dollars for the upper Mississippi from the mouth of the Missouri to St. Paul, Minnesota. Let us take a retrospect of this improvement. Since 1885 the United States government has spent from twenty to twenty-five million dollars in this section of the river. Notice the effect in "commerce."

	Tons
Brush for river construction work.....	82,450
Gravel dredged from river.....	398,178
Rock for river work.....	708,000
Sand dredged from river.....	562,000
Logs that have floated for 50 years.....	98,268
Lumber and wood barged	64,408
Animals ferried across river.....	55,322
Automobiles ferried across river.....	6,034
	1,974,980

"All could be floated in 2 or 3 feet of water, leaving 170,335 tons of questionable commerce remaining, which was hauled on an average of 26 miles or thereabouts.

"What a legislative travesty when eleven-twelfths of the commerce for which $1,000,000 was allotted by the Chief of Engineers is of that character. Who weighed the brush? Who weighed the logs? Who weighed the rocks, gravel, sand, and so forth, used in the river work? Where was it carried and for what purpose? Was it floated 1 mile or 10 miles? Who knows? Why measure Government material for river work, anyway?

"The Chief of Engineers says that 26,609 tons of horses were carried a mile and a half across the river and their value was $6,540,000, or one-fifth of the total. Other live stock carried across the river, he says, was valued at $5,218,730; and then, to cap the climax, this report adds that 6,034 tons of automobiles ferried across the river were valued at $9,545,950.

"Nearly two-thirds of all the glowing commerce valuations on the upper Mississippi, including Government sand, rock, and gravel, turns out to be animals and automobiles ferried across the river.

"Again, how much of the remaining 170,000 tons was repair material or Government supplies out of a total 772,000 tons reported? How much was duplicated before it could boost a million-dollar allotment for the upper river?" (Speech of James A. Frear, in Cong. Record, Jan. 13, 1916, p. 1125.)

And the chairman of the River and Harbor Committee frankly and bluntly admits that these alleged commercial statistics are treated to a process of geometrical progression, or in his own words, are "duplicated, triplicated and quadruplicated in some cases." The simplest way this is done is to count the amount of commerce passing each lock on a canal and adding the result to arrive at the "total" commerce of the river.

But let us see how the technical engineering aspects are handled.

The engineers estimated the cost of the Trinity River improvement in Texas at $4,550,000. Eleven years after it is started it is ten per cent. completed and costs $1,870,061.84 in addition to $7,000 spent on the original survey. The amount spent during the fiscal year (1913) was $342,929. Note that at the present rate the eventual cost will not be four and a half million but eighteen millions ($18,700,618.40) and will be completed one hundred years hence. The engineer's report says, and Mr. Frear comments:

"'The work of the snag boat above Liberty is of no benefit, except to prevent further deterioration of the channel and to improve the drainage.'

"We are apparently spending $20,000,000 to improve the river drainage for Dallas. However that may be, the Chief Engineer has an inspiration when he says in the 1914 report, page 2344:

"'The appropriations which have been made so far by Congress for the Trinity River seem to indicate an intention to provide locks and dams.'

"After 12 years' work and about $2,000,000 in completing 10 per cent. of the work, the chief is beginning to see just what he believes he thought was intended when he recommended $4,550,000 at the outset. Quoting further from this remarkable serial story:

"'The normal flow of the Trinity River for eight months of the year is so small that open navigation between pools is not feasible and until the river is completely canalized — 110 years hence — no practicable navigation will obtain.'

"Apparently for eight months of the year the bed of the stream might be used for a wagon road." (James A. Frear, Cong. Record, Jan. 13, 1916, p. 1135.) [1]

[1] The following colloquy occurred in Congress March 24, 1914:
"Mr. Callaway: I ford this river, and time and time again I have seen water standing in holes below the points called the

An army engineer was wise enough to suggest that it might be advisable to dig artesian wells to aid navigation. And the Chief Engineer, as part of this system of "ingratiating humbuggery" recommended the continuance of work on this project in spite of Congressional condemnation of it. It is no wonder then that we hear the pork-barrel condemned for its "criminal prodigality." There is a peculiar aptness in the description of the pork-barrel as "Congressional waste and engineering complicity."

Such detail about one or two typical cases is presented in order to have clearly in mind just what is happening and to anticipate an objection. It may very properly be asked if the Army Engineers have fallen down so completely on their job, what chance is there that another expert board would succeed?

In any case the breakdown of the ethical and professional standards of the Army Engineer is not pleasant to contemplate. And come what will, these standards should have been maintained. But in the relation of Congress to the Army Engineers is the explanation of the situation. They are subject to all manner of direct political influence. They are dependent upon Congress for funds for their own legitimate work. And in the generosity which the distribution of pork makes possi-

head of navigation. In Dallas for months they could not get enough water to supply the necessities of the city and they hauled water there by rail.

"Mr. Frear: Is not that a case like the Kissimee River in Florida, that ought to be insured against fire?

"Mr. Callaway: Yes . . . I believe I can show you by the wording of the engineers' report that there is no serious intention of ever navigating the Trinity River." (Cong. Record, Jan. 13, 1916, p. 1135.)

ble the Army Engineers have a secure basis of good will for their appropriations. Mr. Frear puts the case somewhat bluntly in the following statements:

"With the facts before us each must answer the question to his own satisfaction, and it may be useless to suggest what such statesmen already know, that after scattering $50,000,000 with lavish hand, in addition to approving $250,000,000 in new projects and granting 250 new surveys in 1915, Chief Kingman will easily locate a crowd of pikers if he fails to get all that he asks from Congress."

Even Army Engineers permit professional considerations to rise superior to political ones. Engineer Deakyn reports against a project, but his report is not accepted by his superiors and Deakyn is transferred. For what public purpose?

The failure of the present arrangement is not the failure of reference of complex problems to trained men for professional advice, but the failure of professional men subjected to what seems to be an irresistible political pressure. The remedy would seem to be to free professional men from such pressure, to encourage independent professional men to undertake the work, and to remove any possibility of an insidious or indirect system of Congressional reward and punishment. A really feasible way of doing this is through the machinery of an administrative commission with proper safeguards.

Let us propose no changes from the existing theory of what should happen, namely: Congress will accept no project in its river and harbor bill that is not recommended by technical engineers and economists in the

governmental employ. Around these men are thrown the machinery of an administrative commission.

The first thing to be done is to protect the commission from minority control or committee control. This is done by means of a continuing appropriation instead of an annual appropriation. As pointed out elsewhere, such an appropriation continues in force until a majority of the legislature and the executive agree to change it, or a legislative majority sufficient to override a veto can be secured. In the Interstate Commerce Commission this remedy was adopted. It was adopted also in the Federal Trade Commission. It is adopted in the legislation providing for a Federal Board of Vocational Education.

In the proposed National Waterway Commission bill this safeguard is thrown around the members of the Commission through the provision: "Sec. 2. That each commissioner shall receive an annual salary of $10,000 payable in the same manner as the judges of the courts of the United States. The commission shall appoint a secretary who shall receive an annual salary of $5,000 payable in like manner." Thus while the commissioners and the secretary are protected as to salary, they are not protected, for example, as to traveling expenses. But more important than that is the fact that the field staff of the commission, after the initial appropriation is expended, is at the mercy of a committee of Congress or a majority of either house or the executive and one-third of one of the houses and will always be similarly situated upon the expiration of an appropriation — presumably annually. The provision of the bill is: "Sec. 7. That the sum of

$500,000, or so much thereof as may be necessary, be, and the same hereby is, appropriated, out of any money in the Treasury, to carry out the provisions of this Act." By inserting the word "annually" between the words "is" and "appropriated," the independence of the Commission from committee or minority control would be secured. For automatically there would be placed at the disposal of the Commission $500,000 annually, or any other definite sum, unless a majority of Congress wishes to increase, decrease or reject it entirely, in other words, change it.

These continuing appropriations permit the Commission and its field staff to work unhampered, subject, of course, always to legitimate legislative control. The attempt of the majority to abridge the power of the Commission or subject it to improper influence through legislation raises the question in a public manner and thus permits the organization of a public opinion. If it were rushed through one house, the second house might rebel. If both houses were of one mind on the subject, the executive might rebel. Each point of friction furnishes opportunity for more public discussion. After they heard from back home the legislators might want to change their minds.

CHAPTER XI

THE EXECUTIVE VETO

In the executive budget plan there is no need for executive veto except for legislatively initiated appropriations, for the legislature is primarily a ratifying agency of executive proposals. In the plan here proposed the present relation of executive and legislature is accepted, though it is believed that the budget-making procedure is so ordered that each can better perform the functions definitely assigned to it in our scheme of government. The executive veto is therefore retained. The legislature has full power over budget estimates, and the veto power is given as a corrective for possible abuses as a means of requiring the legislature to think again and as a means of calling the legislature's attention to projects of doubtful value. Moreover, it gives public opinion that has been slow in forming an opportunity for expressing itself after the legislature has definitely formulated its ideas. The function and value of the executive veto in budget-making are the subject matter of this chapter.

EXECUTIVE VETO OF ITEMS

Despite the abuse of the veto power by the colonial governors, the constitution of 1787 gave the President the "qualified negative" with which we are familiar.

While radicals with reference to their relations to England, the colonists were essentially conservative in formulating their own constitution. There was just a slight fear of popular assemblies running amuck. It was necessary, therefore, to have a check on them through the executive who was to be the best man selected by the best men as organized in the Electoral College. The veto was very sparingly used at the beginning. Up to 1830 only seven Presidents of the United States used it, and no bill was passed over a veto until 1845. Since 1845 the veto power has been more frequently used than before, but its use even now is infrequent compared to our vast mass of legislation. There are, of course, exceptional cases like Johnson's twenty-one vetoes, Grant's forty-three vetoes, and Cleveland's three hundred and one vetoes. But the main point is that the veto was conceived primarily as a negative influence on legislation. Only recently (1915) the Supreme Court of Illinois held that in exercising the veto power the governor "is exercising only a qualified and destructive legislative function and not a creative legislative power." [1] It was to prevent too hasty, ill-considered, ill-advised legislation.

THE SITUATION WITH REFERENCE TO ITEMS IN APPROPRIATION BILLS

Appropriation bills are rarely vetoed, but it is urged that the opportunity to veto is practically denied the President through the placing of many unrelated items in one bill. So many of these items are undoubtedly

[1] Opinion of the Supreme Court in the Fergus Case, Filed Nov. 6, 1915.

in the public interest, and others are just "pork." But to veto the bill injures the public service less than passing it, and so the President is "hamstrung." The situation is thus worded in a memorandum submitted to the Chamber of Commerce of the United States:

"Thus, by conjoining in a single bill diverse subjects of varying degrees of merit and requiring action by the President upon the bill as a whole, he is deprived of the power of independent judgment, and coerced either into accepting that of which his judgment disapproves or defeating that which he believes wise and necessary.

"This condition arises through the absence from the Constitution of any regulation as to the number of subjects which may be included in a single bill, and from its failure to empower the President to deal separately with unrelated subjects when conjoined in a single bill.

"Two grave accompanying evils have resulted:

"One — The practical powerlessness of the President to exert any effective restraining influence upon general appropriation bills, and the resulting outlays;

"Two — The frequent enactment of undesirable measures opposed by the President by attaching them as 'riders' to general appropriation bills whose passage is usually indispensable to the operation of government, and whose acceptance by the President is therefore practically compulsory.[1]

"The President is practically powerless to prevent these abuses, which lie at the root of the governmental extravagance of the United States, by reason of the fact that he has no discretion as to individual items, but must accept measures as a whole or reject them as a whole."

The remedy for the evil is, in short, executive veto of items in appropriation bills.

[1] This is not strictly a budget problem and hence is not discussed here.

THE CASE FOR THE EXECUTIVE VETO OF ITEMS

It is urged in support of this contention for the veto of items that:

(1) defects are generally conceded by publicists;
(2) defects are denounced by well informed public opinion;
(3) several Presidents have protested earnestly in various veto messages against the Congressional coercion;
(4) public sentiment is progressively in favor of it.

These four points make in reality two points, namely, the "rebellion" of Presidents against Congressional coercion, or, in other words, that several Presidents have been in favor of veto of items because they were compelled, on account of the form of the appropriation bill, to sign bills containing objectionable items; and an increasingly favorable public sentiment. Both of these points will be taken up in detail.

WHAT IS AN ITEM?

Assume for the moment that there is an unquestioned public sentiment in favor of the executive veto of items of appropriation bills. The basis of this assumed public sentiment is very simple. Appropriation bills contain many items, some objectionable, many not. The executive ought to have the power to reject the objectionable and accept the rest. The remedy is therefore very simple: the executive veto of the items of appropriation bills.

Let us look for a moment at the actual situation as

it confronts an executive. An appropriation bill comes to the executive in this form:

State of Nevada
Public Works No. 1 — Bridge, A, River...$10,000,000
Public Works No. 2 — Dredging 100,000
Public Works No. 3 — Preparation of plans 10,000
or
State of Nevada
P. O. City of A.....$50,000
P. O. City of B..... 50,000
P. O. City of C..... 50,000

We suppose that item 3 in both cases is objectionable. The advocates of the veto of items show how very simple their remedy is. Is it?

But suppose the legislature wanted to present the appropriations to the executive in this form:

Public works.....$1000000000

In such a procedure on the part of the legislature the executive veto of items is useless, and exactly a similar situation could occur with reference to the case of post offices.

Let us study this a little more closely and take, by way of illustration, an appropriation for a state university. The principle of the case will apply equally well to any state or federal department.

If the appropriation were presented in this form:

University of Weissnichtwo.....$3,000,000

it would make no difference whether the executive had the power to veto items or not. He would have to

reject or accept the total appropriation. But, on the other hand, the appropriation bill might be in this form:

APPROPRIATIONS FOR THE UNIVERSITY OF WEISSNICHTWO:

Graduate School	$10000
College of Arts	10000
Extension Division	10000
School of Medicine	10000

In such a case, the executive could decide merely whether a school is to be supported or not, and the use of the veto power here is comparatively slight. Still another form in which the appropriation bill may come to the governor is:

APPROPRIATIONS FOR THE UNIVERSITY OF WEISSNICHTWO:

College of Arts	
Department of Latin	$10000
Department of Mathematics	10000
Department of Political Science	10000
Department of Sociology	10000
Department of Hebrew	10000

The usefulness of the power of the executive to veto items is, with this form of appropriation bill, more serviceable. He could express somewhat his preference for the "cultural studies" or for the new studies. But he would be limited to merely negativing a whole department. He could not nicely express his preference for one or the other. The number of forms in which the appropriation bills might come to him are numerous, but we will carry our illustration one step further. The appropriation for the University of

Weissnichtwo may come to the executive in this form:

College of Arts
  Department of Political Science
    Professor Teufeldrock.....$100000
    Professor Richard L. Ross..... 100000
    Professor Edward A. Wyman..... 100000
    Professor Bruce McLaughlin..... 100000
  Supplies

Now in a detailed itemized appropriation bill, the power to veto items has its maximum effect, and in fact depends for its usefulness on such a detailed segregated appropriation bill. But notice also not merely the power for good, but also for evil. Let us suppose that Professors McLaughlin and Wyman are safe and sane, experts before public service commissions for public utility corporations, "accelerators of public opinion." Suppose on the other hand that Professors Ross and Teufeldrock were advocating government ownership of telephone and telegraph, limited franchises for water power corporations, child labor and woman labor laws. What a power the veto of items would be for good or for evil in such a case.

What is the upshot of the matter? The problem of the veto of items of appropriation bills is secondary to the problem of the form of the appropriation bill. In other words, the usefulness of the veto of items depends upon our meaning of items and depends for its value on the detail in which the appropriation bills are itemized. The question of the detailed appropriation bill is discussed at some length in the chapter on "The Budget and the Administration." It is there shown

why detailed appropriation bills are undesirable. And if the experience there told and the reasoning on it are conclusive, then the veto of items is built upon a foundation of sand.

THE CHARACTER OF THE APPROPRIATION PLAN OF FUNDAMENTAL IMPORTANCE

Budget bills may present different questions to the executive in connection with the possible use of the veto power. The character of the question to be answered will seriously affect the use of the veto power. Suppose the appropriation for a department were presented to the executive in this form:

Department of the Interior
Bureau of Education.....$10000000

The character of the question the executive will have to answer in considering this appropriation is not evident from the form of the appropriation but is determined by the general character of the appropriation plan.

If past legislatures have been wise enough to establish the presumption of continued existence for the permanent services of the state or nation on the basis of continuing appropriations, the question before the executive is: *Shall the Bureau of Education have the proposed appropriation or shall it continue on the same basis as last year's appropriation?*

If on the other hand there is no presumption of continuance of public services and these services are financed for just a year or a biennium, then under this system of annual appropriations the question before

the executive is: *Shall the Bureau of Education have the proposed appropriation or nothing?* In the former case the question is whether a change shall be made in the running of the department whose continuance is presumed. And in the latter case the question is whether the department shall be abolished or whether it shall be continued on the proposed basis? The question of the executive veto is affected, therefore, not only by the form of the appropriation bill, but by the fundamental character of the appropriation plan.

IS PUBLIC SENTIMENT FAVORABLE TO EXECUTIVE VETO OF ITEMS?

Two arguments are urged in favor of the executive veto of items: a progressively increasing favorable public opinion, and the experience of the Presidents. Bryce states the case for the former in these words: "Such an amendment is generally desired by enlightened men because it would enable the Executive to do his duty by the country in defeating many petty jobs which are now smuggled into these bills without losing the supplies necessary for the public service which the bills provide. The change seems a small one, but its adoption would cure one of the defects due to the absence of ministers from Congress, and might save the nation millions of dollars a year by diminishing wasteful expenditure on local purposes." [1]

If Bryce's statement is accepted at its face value, then giving cabinet members a seat in Congress would obviate the errors indicated and others, so far as there

[1] Quoted by Merchants' Association in their statement to the Chamber of Commerce of the United States, 1916, p. 5.

is the possibility of comparison between the English practice and our own. If Bryce here means that the American Cabinet members shall have in Congress relatively the same position as British ministers do in Parliament, then the comparison avails nothing for that is impossible without a radical change in the underlying theory of and in the structure of our government.[1] But apart from this remedy, Bryce's statement is based merely on opinion, however enlightened.

Statistics about constitutional provisions are used in support of the contention that public opinion is favorable to the executive veto of items. As indicative of the extent to which the public sentiment of the United States has progressed in this matter, it is pointed out that "the Constitutions of no less than 39 of the States have been so amended as to require, in effect, that each bill shall contain but one subject, to be clearly expressed in its title, with exceptions as to appropriation bills in 12 of such states; while in 35 states the Constitution permits the Governor to disapprove specific items of appropriation bills, which items become void unless repassed by the legislature." Accepting the facts as stated, the need for veto of items of appropriation bills in the twenty-seven states that require that each bill (including appropriation bills) shall contain but one subject to be clearly expressed in the title, is slight. If each bill treats of one subject, the question is clearly put up to the executive as to whether he wants to allow a specific amount or amounts as the case may be. If it is insisted that the governor should

[1] How serviceable cabinet members might be on the floor of the legislature from other aspects of the budget problem is indicated in Chap. VIII.

not be confronted with a lump sum appropriation but with a very minutely detailed appropriation bill, the question shifts to the form of the legislative act. This question has been discussed elsewhere from the point of view of the administration.

But the actual situation as it confronts us is not fully presented in the above quoted summary. It may be presented somewhat more fully as follows.

Even assuming that the inclusion in the constitution represented a deliberate judgment of the electorate, one ought to hesitate a long time before declaring that the provisions of the present constitutions indicate any general public opinion in the United States on a general proposition of giving the executive power to veto items. Three governors have the general power, but eight governors do not have it. Twenty governors who have the power are severely limited in their use of it by the fact that only bills dealing with single subjects can come up to them. Nine additional governors are similarly restricted except as to general appropriation bills, which deal for the most part with the routine of present organization. Six governors have no power to veto items, but all bills presented to them deal with single subjects. Surely in the light of these facts there is no overwhelming public opinion in favor of granting the executive power to veto items.

The presence of these provisions by constitutional amendment in the state constitutions is supposedly presumptive evidence of the existence of this public opinion. But this presupposes that the public was asked to decide specifically the question of granting this power by constitutional amendment. Is this so?

PRESIDENTIAL EXPERIENCE

The essence of the second argument is that presidential experience is against the veto of bills and is in favor of the veto of items. Presidents are alleged to have rebelled against the present plan. Have they? Let us take first an example of substantive legislation. President Wilson (and Taft and Roosevelt, too), had presented to them an immigration bill made up of a large number of separate propositions. From a close study of the situation it may be said that the administrative reorganization of the immigration service and the strengthening of the hands of the administration provided for in the Burnet immigration bill made a very desirable piece of legislation in all but one particular, namely, the literacy test. Presidents Wilson, Taft and Roosevelt vetoed the bill solely because of the issue.[1] Why? Because they knew they had a fairly well organized definite public opinion behind them. The administrative reorganization of the immigration service would be greatly in the public interest but it could not arouse any very great amount of dynamic public opinion. The immigration service did its day-to-day work somehow, and we had no literacy test.

Why not adapt this method to appropriation measures? Why not raise the issue frankly? The President might very well defy Congress and go to the country. Such a procedure would secure by-products in public information and in civic education that would be worth the cost — whatever it is. But it may be

[1] The bill was finally passed over President Wilson's second veto.

urged that necessary and "permanent" public works and public service are held up because of a disagreement between the executive and Congress. In the analogy of the immigration service the public business would go on somehow; in the latter case the wheels of government would stop. The American people could make the situation exactly analogous if they would put all necessary public services and works on the basis of other laws of continuing in force until changed by positive action of the law-making agencies.[1] By thus reinforcing the President he would be encouraged to stand out for the national interests against the local or special interests provided for in the item. Such an exercise of the veto power would greatly enhance the Presidential office in popular estimation, for as Bryce long ago pointed out: "So far from exciting the displeasure of the people by resisting the will of their representatives, a President generally gains popularity by the bold use of his veto power. It conveys the impression of firmness; it shows that he has a view and does not fear to give effect to it. The nation, which has often good grounds for distrusting Congress, a body liable to be moved by sinister private influences, or to defer to the clamor of some noisy section outside, looks to the man of its choice to keep Congress in order, and has approved the extension which practice has given to the power."

The situation which is at the basis of the demand for the veto of items is the inclusion in appropriation bills of disparate unrelated subjects. The proposal of executive veto of items permits the situation to con-

[1] See chapter on "The Budget and the Administration."

tinue unchanged and proposed to deal with it remedially. The statement of the Merchants' Association itself suggests another remedy — permit the inclusion of but one subject in each bill unmistakably described in the title. So far as this method is effective, it is superior to the veto of items because it is preventive rather than remedial. But here the same difficulty arises as before. What is a subject? What is an item? Either method is patch-work.

SOME BAD RESULTS OF EXECUTIVE VETO OF ITEMS

No clear case for the executive veto of items has been made on the basis either of public opinion as expressed in constitutional provisions for the executive veto of items or of presidential or other executive experience. On the other hand, there are certain results of the executive veto of items that should be clearly kept in mind — results on legislation and on executive power. And the fundamental question of the adequacy of veto of items to correct the conditions which are at the basis of the demand for it may be seriously raised. These points will now be taken up in order.

LEGISLATIVE CONTROL BY EXECUTIVE AND A MINORITY

The executive veto of items affects seriously the number of votes necessary to pass or to prevent legislation. It is a very effective means for doing a great deal of political jobbing. The veto of items gives opportunity, in detailed budget bills, to legislate out of office a man here or a bureau there, particularly if it

is not possible to organize about either the man or the bureau an effective protesting public opinion. In states requiring a two-thirds vote to override a veto, the governor in coöperation with one more than one-third of those present in one house on the day the veto message comes up for vote can effectively abolish a bureau or other organization or functional unit of the government. In states requiring a majority vote to override a veto, a majority of one of those present in one house would be sufficient. Where the number of votes required to overturn a veto is stated in terms of full membership, absentees are disfranchised or become a means of obstruction. In any case, it is very difficult to stimulate or organize legislative opinion about the details of the bill, unless the public officer leaves his office for the lobby and is popular enough to cajole, convince or win the members of both houses of the legislature. The *veto of bills* raises clear questions and most likely large questions; the *veto of items* raises for the most part only petty or minor questions or questions in which it is difficult to interest the legislature,— after a veto. In appropriation bills which are usually passed toward the end and at the end of the session, this power to veto items is practically absolute over the governmental structure — is, in fact, the "power of the purse."

AGGRANDIZEMENT OF EXECUTIVE POWER

The report of the Committee on Finance, Revenues and Expenditures of the New York Constitutional Convention, 1915, has a remarkable statement in it regarding the executive veto of items. It discusses

this subject under the heading: "The present system reverses the real relations of the executive to the legislature and surrenders important powers to the executive." The report says the executive veto of items "*has nearly resulted in an abandonment to the executive of the priceless legislative function of holding the purse.*" [1] And again, wherever the legislature adjourns and leaves the appropriation bill in the hands of the governor, "he can make it an instrument of reward and punishment." (Budget Systems, p. 437.)

It can be readily seen how the veto of items may easily become an instrument of reward and punishment after a session. The legislature is gone home, and there is no possibility of passing a bill over the executive veto. The executive, therefore, has full power to cut where he will. His power of reward and punishment is correspondingly greater and specific as the appropriation bills are specific.

Nor is this power of reward and punishment limited to the time after the session. A very blunt statement of possibilities was made at a hearing [2] of a Congressional Committee. It was pointed out that instead of stopping log-rolling in the legislature it was merely transferred to the executive office.[3] Congressman Morgan said:

[1] Italics ours.

[2] Hearing before Committee on Judiciary on H. J. Res. 15. 63d Congress, Sept. 9, 1913.

[3] But compare Congressman Morgan's statement at the same hearing: "Suppose that I have an appropriation that I expect to get through the House and Congress, knowing that the President has that power, would not that have a tendency on the average man to say, 'Well, I will kind of compliment the President a little; I will do what he wants'—would not that have influence over the average legislator?"

"You say that it would do away with log-rolling. It might do away with log-rolling in the House and Senate among Senators and Representatives, but would it not simply transfer the log-rolling to the White House? Would not the man who has influence with the President get his appropriation through, while the man without such influence or power would have his appropriation vetoed?"

Congressman Nelson, after pointing out from his experience on the Public Buildings and Grounds Committee that "the President is also interested in projects in that bill," continued:

"By this provision would you not simply make it obligatory upon every Member who wanted a project in a bill to see the President and get him not to object it, and bring such pressure to bear upon him as he could?"

And Mr. Morgan in this same hearing made another good point: that while the executive's direct influence over legislation would not be greatly increased his indirect power would be enormously increased: "This amendment would not largely increase the power of the President over legislation, but would largely increase his influence and dominating power over every member of Congress."

POWER TO VETO ITEMS INSUFFICIENT

It was necessary to take up the various phases of the subject that have been discussed. The veto of items to be effective depends on a very detailed itemized appropriation bill. This need really shifts the question to the question of lump sum or detailed appropriations and must take into account, as already discussed, many other factors.

But in spite of all the points raised, let it be assumed that an executive who has the power to veto items really wants to cut appropriations, and there is presented to him a fairly detailed appropriation. Is the power effective?

An Idaho Case — A rather remarkable situation was created by Governor Hawley of Idaho in 1911. The governor has the power to veto items, but this power the Governor of Idaho felt to be inadequate and assumed the power of disallowing *part of an item.* His action may be illustrated by a single instance. The appropriation bill for the state university contained an item of $99,800 for maintenance. Regarding this item the Governor said: "I disapprove the item of $99,800 to the university and cut it down to $80,000." The Governor approved the general bill as indicated in the following statement:

"'The bill received by the Governor on the 4th day of March, 1911, at 11:30 P. M., and approved on the 14th day of March except as to items disallowed and disapproved as a whole and allowed in part as shown in the annexed message.'" (Portland *Oregonian,* May 4, 1911.)

In a letter of explanation of his action the Governor took an amazingly frank position: that the university had better take what he offered or it would get nothing. The Governor, after explaining that a decision of the Supreme Court of Pennsylvania had given the governor the power to reduce items, added:

"'While this decision of a very high court is not binding upon us here, and while I doubt very much whether our Supreme Court would affirm that doctrine, I concluded it

would be better to follow such a rule than to strike out any appropriations in their entirety or to call a special session of the legislature. I apprehend no difficulty on this score, however, as the courts would undoubtedly hold the entire item was disapproved if it were contended before them that the Governor did not have the right to reduce.'" (Portland *Oregonian*, May 4, 1911.)

In this case the veto of items led the Governor into what is obviously executive usurpation of power — and consciously so. At any rate, it is a clear indication of the inadequacy of veto of items.

An Illinois Case — A recent Illinois experience is particularly illuminating in connection with this whole question of the veto of items. Governor Dunne disapproved strongly of the amount of certain items in an appropriation bill. He thought the amounts were excessive and he wanted to disapprove the excess — exactly as the Governor of Idaho had done. He felt his power to veto items included also the power to veto "parts and portions of items," and acted on this assumption. He reduced certain appropriations directly and others by striking out the words "per annum," thus halving the appropriation. His action in these two particulars may be illustrated by quoting two items from the veto message:

"In section 1, paragraph eleventh, line 32, item 'for publication of decisions of the Court of Claims, the sum of $2,500' 'per annum,' I disapprove of the words 'per annum' after the figures $2,500, leaving the item to read, 'for publication of decisions of the court of claims, the sum of $2,500.'

"In section 1, paragraph eleventh, line 32, item '$4,500 per annum,' I approve in the sum of $3,500 per annum and veto and withhold my approval of all of the sum in said item in

excess of said sum of $3,500 per annum." ("Opinion of the Supreme Court in the Fergus Case," Filed November 6, 1915, p. 39.)

Legally and practically there is no difference in these methods of disapproving a part of an appropriation, and hence separate treatment is not necessary.

A taxpayer's suit was instituted and the case finally reached the Supreme Court. The Supreme Court of the state decided that under the Illinois Constitution the Governor has no power to veto items except in their entirety.

Those who look upon the veto of items as being a solution for the problem of excessive or extravagant appropriations should well consider Governor Dunne's words to the legislature in calling a special session to correct the situation resulting from the Supreme Court decision. Governor Dunne said:

"Under the decision in the Fergus case, the Governor has not the constitutional right to reduce the amount of an appropriation in an item. His only right is to approve items in their entirety or disapprove them in their entirety. If the Governor be of the opinion that an appropriation in any item is excessive his only right is to destroy the whole item by veto, or let it stand or take no action at all. It results from this situation that a Governor may frequently be compelled to allow items to stand in an appropriation bill, which, in his judgment are in excess of the needs of the State, and that he cannot in fact control the amount of the appropriation. If the item in its entirety be vetoed, the department of the State government for which the appropriation is made may be seriously crippled and its efficiency destroyed, and if the item be allowed to stand in its entirety excessive appropriations may result. As the Executive cannot in the present

situation be placed in a position by a constitutional amendment where he can originate and control appropriations by recommendations to the Legislature, the next best thing, in my judgment, is to give the Executive power to control appropriations by giving him the *right to veto parts and portions of items in an appropriation bill.*" [1] (Governor's Message (Illinois), Nov. 22, 1915, p. 5.)

Governor Dunne's experience shows clearly that in order to secure the results that are claimed for the veto of items in appropriation bills the supplementary power of vetoing part or portion of an item must also be given. And by that very fact the case against the veto of items stands out in bolder relief.

In all but one state, Pennsylvania, the power to veto parts of items is denied to the governor. The courts have uniformly, except in Pennsylvania, viewed such power as executive usurpation. The Supreme Court of Mississippi says that to permit such a thing is to "distort and pervert legislative action." (State vs. Holder, 76 Miss. 158.) "Such a proposition," says the Supreme Court of Texas, "involves such an intolerable tyranny and hurtful usurpation as not to be entertained for one minute." (Fulmore v. Lane, 140 S. W. 405.)

The Illinois Supreme Court is equally emphatic in denying power to the Governor to veto part of items. "To permit such a practice would be a clear encroachment by the executive upon the rights of the legislative department of the state." It would practically deny to the legislature the discretion vested in it "to determine the amount which should be appropriated for any

[1] Italics ours.

particular object." The decision is also called "an invasion by the Governor of the functions of the legislative department." (State v. Holder, 76 Miss., 158.) "While it is true that in one sense the Governor, when engaged in considering bills, is acting in a legislative capacity, and is for that purpose a part of the legislative department of the State, he is exercising only a qualified and destructive legislative function and not a creative legislative power." (Opinion of the Supreme Court in the Fergus Case, Filed November 6, 1915, pp. 40–41.)

SUMMARY

The veto of appropriation bills, like other parts of the budget problem, is not a problem by itself, disconnected from or unrelated to the other parts of the budget program. To so consider it would be to disregard the actual situation. The veto problem is a part, and a related part, of the whole and it must be so considered.

The veto power of the executive is a negative power, not a positive power; a destructive, not a creative power. It expresses executive doubt as to the wisdom or need of the proposed legislation. It aims to prevent unwise or unnecessary action rather than to secure wise or necessary action. Or rather, its purpose is not primarily to prevent legislation but to provide the opportunity for the legislature to give the matter second thought before it becomes law. It was this fundamental conception of the veto power that was at the bottom of the discussion of this chapter.

In the executive budget there is, as explained, no

need for the executive veto. The legislature is merely a ratifying agency of executive proposals, and the dominating influence of the executive throughout the whole budget procedure, including the legislative phase, makes it unnecessary. There is, however, an exception to this statement for the executive is given power to veto proposals legislatively initiated, but such proposals are not encouraged in the executive budget plan.

In a budget plan in which the executive presents the plan and the legislature is not restricted in the action it may take, the executive veto may and does serve a very useful negative purpose, particularly if departments are on the basis of continuing appropriations so that only the question of increase or decrease is raised by the veto. The veto of bills as a whole raises no serious question.

Serious question is raised, however, over the proposal to give the executive power to veto items. The first question is: What is an item? If an appropriation act is framed in very great detail, the veto of items will have its maximum effect. But a detailed budget act ties up funds so minutely and limits administrative discretion so completely that the "cure" is worse than the disease. In lump sum appropriations the veto of items is of decreasing value according to the degree of "lumpness." And so the problem of the executive veto of items is merely a phase of the problem of the segregation of the budget act, which is elsewhere rejected for its evil effects on administration.

Two arguments are urged in favor of the veto of items: (1) an increasing favorable public sentiment, and (2) executive experience. The case for a favor-

able public sentiment is based upon the fact that a large number of constitutions have provisions for the executive veto of items. Even assuming that such provisions indicate a definite public sentiment on the subject, the case for the executive veto of items is not at all clear when the provisions are examined in the light of other constitutional provisions, particularly those providing that each bill shall treat of one subject. Executive experience is not decisive, particularly if it is kept in mind that the "qualified negative" of the executive is intended to prevent hasty and bad legislation rather than to permit of executive domination of the legislature. The positive influence of the executive in legislation is primarily in his initiative through recommendation and through representatives of the administration on the floor of the legislature with the right to speak but no right to vote.

Certain evil results inevitably follow in the train of the executive veto of items. Control over legislation is placed in the executive supported by a legislative minority. It is claimed that the veto of items would destroy log-rolling. It would remove it in a great degree, at least from the legislative halls, but it would not destroy it. It would merely transfer it to the Executive Mansion in a more invidious and dangerous form, and the executive would become a kind of Providence — an instrument of reward and punishment.

But the surprising thing is that the power to veto items is inadequate to accomplish the purposes which are urged as a basis for its adoption. Two rather striking instances — and rather ordinary instances, let it be added — of the inadequacy of the veto of items

are given from Idaho and Illinois. Both show clearly that to the veto of items must be added the power to veto "parts and portions of items," if the problem is to be met in this way. That way lies, in the expressive language of a committee of the New York Constitutional Convention, "the abandonment to the executive of the priceless legislative function of holding the purse."

CHAPTER XII

THE COURTS AND THE BUDGET

THE whole budget discussion has centered about the executive preparation of the budget proposals, and particularly about the need for executive revision of departmental estimates. The term, "departmental estimates," has been accepted without a too insistent inquisitiveness as to what should be included in the term. Should the courts be included here? A university class to whom this question was proposed was greatly surprised by it. And yet the administration of justice must be financed. Has the reader ever heard the relation of the financing of the judiciary to the budget discussed? Many persons, even those more than ordinarily informed on the budget, are surprised at the very inquiry.

If the financing of the administration of the courts presented the same budget problem as the financing of the executive departments of government, the budgetary procedure for the courts would be the same as outlined in the preceding chapters. Estimates for the judiciary would be prepared by the judges in closest touch with the problems. These estimates would be reviewed by the presiding judge (departmental estimates), or, if the court is made of distinctive parts, by the presiding judge of the highest appellate jurisdiction, and then submitted to the governor for inclusion, after

revision, in his budget. These would be submitted along with the other estimates and subjected to similar legislative procedure and action. A representative of the courts, presumably but not necessarily, the presiding justice, would have a seat on the floor for purposes of explaining the departmental estimates and supplying other needed information, but he would have no right to vote. This representative of the judiciary could be asked questions on the spot and might be subjected to the process of interpellation. The executive might veto the budget act as it relates to the judiciary, exactly as he might veto any other part of the budget act. But this procedure, while generally applicable to the courts, must be modified in detail for the courts.

JUDICIARY ESTIMATES PREPARED BY JUDICIARY

The judiciary will prepare the estimates for financing the courts for the same reason that other public officials prepare their estimates. The judges have the day-to-day experience in the courts; they have the most intimate experience in the administration of the courts. From the viewpoint of the judicial system itself, they know. The budget estimates ought to embody this knowledge and experience.

If the judicial system is made up of numerous and complicated parts, there will be need for a review within the judicial department similar to the review by the departmental chiefs — a balancing of part against part in the interest of a coördinated whole. This review would naturally be made — if at all — by the presiding judge of the highest court or perhaps by the highest court.

The preparation of the proposals by the judiciary itself will raise no serious opposition. If the legislature really wants the most intimate contact and the best expert judgment available with reference to the budget proposals for the courts, then it must rely on the judiciary. And if the legislature wants this expert and intimate information during the progress of the legislative discussion, there is no reason why a representative of the courts should not have the privilege of the floor at such a time to explain and to volunteer information, and perhaps there would go with that the correlative right of the legislature to require judicial officers to submit to the interpellation.

NO EXECUTIVE REVISION OF JUDICIARY ESTIMATES

The budget proposals for the judiciary prepared by the judiciary are transmitted to the executive to be transmitted to the legislature. Should the President or the governor transmit these without revision to the legislature?

Executive revision of departmental estimates in executive departments is given because responsibility for "faithfully executing the laws" is placed upon the executive operating through these departments. The executive is head only of the executive department of government and in "long ballot" states of only certain parts of that. The judiciary is independent of him — and designedly so — even though, as in the national government, he may have power to designate the judges subject to the approval of the senate. But after the appointment he is without power or responsibility or jurisdiction. Hence he should not have the power

to revise the estimates of the judiciary before they are submitted to the legislature unless it is the intention to give him great influence over the judiciary.

It may be urged that there is need for independent lay review of judiciary estimates. There is, but not by the executive. The lay point of view will be adequately expressed and best expressed by the legislature. That is the primary function of the legislature, not the executive.

There is, perhaps, a still more fundamental reason why the executive should not revise the judiciary estimates. And that is, there is no need or only the slightest need, if any, for such revision. The budget for the courts does not, or only rarely, raises questions of policy; the questions raised are questions of organization or of financing an existing organization. And none of these considerations require or presume or imply the need for executive review of judiciary estimates.

There is, therefore, in general no need for executive revision of the judiciary estimates. They will be sent to the executive and by him transmitted to the legislature along with the estimates for executive and other administrative departments. The New York Constitution Convention of 1915 proposed dealing with this problem similarly. But while it specifically denied the right of revision of judiciary estimates, it gave the governor a power of recommendation. The recommendation of the Convention to the people of the state reads:

"Itemized estimates of the financial needs of the legislature certified by the presiding officer of each house and of the

judiciary certified by the comptroller shall be transmitted to the governor before the fifteenth day of January next succeeding for inclusion in the budget without revision but with such recommendation as he may think proper." (New York Proposed Revised Constitution, Art. V, 1915.)

THE POWER OF THE LEGISLATURE OVER JUDICIARY ESTIMATES

The relation of the executive to the judiciary estimates is a comparatively simple problem and offers no difficulty. But the real problem of budget-making for the courts arises over the question of the specific power of the legislature over the judiciary proposals. And the specific question is: Can the legislature exercise the same power over proposals of the judiciary as over the executive proposals?

THE IMPORTANCE OF THE CONTROL OF THE JUDICIARY

To what extent there is or may be legislative control of the courts is of fundamental importance, for in our particular form of democratic government the courts are the final arbiter of our destinies. If a question arises, as recently in Illinois, regarding the appropriations to the legislative and executive departments of government, the question is finally settled by the courts — in this case by the Supreme Court of Illinois. If the question should arise as to the appropriations to the courts, the final say would *in our legal theory* be by the courts themselves. This is well illustrated in a procedure outlined by President Taft in a case where the salaries of federal judges had been denied by Congress. (See p. 285.) One can easily imagine the

courts objecting to legislative control on the ground of the independence of the judiciary based on our legal theory of the separation of powers. One could insist, in turn, on this ground that the legislative acts ought not be subject to judicial determination as to their unconstitutionality. However that may be, the judiciary is a power that is neither checked nor balanced except through the very slow process of constitutional amendment. *This is our doctrine of judicial supremacy.*

This is the usual conception. But it is conceivable that there may be limitations upon it through the legislative control of the budget of the judiciary, if there is such control.[1]

LEGISLATIVE CONTROL OF THE JUDICIARY

Legislative control of the judiciary may be partial or complete. It may be manifested in two ways that are pertinent to the present inquiry: by passing appropriations that are clearly inadequate, and by refusing to pass any appropriation at all. Both these forms of control through the budget will be discussed later.

There can be no doubt that two-thirds of the legislature or the executive and a majority of the legislature

[1] One of the amazing things in the Maryland budget constitutional amendment is the provision that the legislature may increase the judiciary estimates but may not reduce them. Though the language of the amendment itself is somewhat dubious, the report makes unmistakably clear the provision, namely: "The legislature may increase them (the estimates for the judiciary) but not reduce them." The wording of the amendment is: "*The General Assembly may amend the bill by increasing or diminishing the items therein relating to the General Assembly and by increasing the items therein relating to the Judiciary,* but except as hereinbefore specified may not alter the said bill except to strike out or reduce items therein."

have through the law-making power ways of controlling the courts. One way is through a legislative definition of the jurisdiction of the courts. This is unlimited in the case of inferior courts and limited in the case of the Supreme Court. Both the Supreme Court and the inferior courts can be controlled, too, through an increase of personnel sufficient to overbalance an unfavorable majority. This is the method suggested by Allan Benson, the Socialist candidate for President in the campaign of 1916. In order to prevent the Supreme Court from declaring unconstitutional the Socialist measures which he would propose: "I would suggest," he said, "to the Congress that it increase the court from nine to twenty, and I would nominate eleven Socialist lawyers to complete the court — and outvote the other nine." (*Every Week*, June 2, 1916.)

Do the budgetary acts offer another method of control?

POWER OVER COURTS THROUGH INADEQUATE APPROPRIATIONS

Suppose the case of the Congress appropriating for the courts, the judges' salaries and nothing more — no provision whatever being made for stenographic clerks, reporters, messengers, custodians of buildings, books for judicial officers, rent, traveling expenses, fuel and the many other items now included in the appropriations for the courts.

In this situation the courts would be powerless except for one possibility. No question of constitutionality would be involved, and the courts would have no juris-

diction. It would seem, therefore, that a negative control of the courts is possible through the budget. There is a possibility, however, though it has not occurred as yet, of a court objecting to inadequate appropriations as being contrary to that "fundamental principle of our public law," the separation of powers.

But suppose with the usual annual or biennial appropriation systems of our states a state court should actually make such a determination of unconstitutionality, the courts are then without any appropriation whatever. And that raises another question that is discussed later.

AN EXTRAORDINARY METHOD OF FINANCING THE COURTS

Before proceeding to that question, it will be well to point out the extraordinary and amazing situation presented by certain courts in the city of Philadelphia, the judges of which are paid their salaries by the state of Pennsylvania.

There is in fact no real budget-making for these courts. When the money is needed for any of the operating expenses of the courts, the court issues a mandamus execution.

A mandamus execution, commonly known as a mandamus in Philadelphia, is an order of the court in the nature of a writ against the city treasurer to make payment from unappropriated funds or funds appropriated by councils, particularly for the payment of mandamuses. By use of this process courts order payment for stenographic services, supplies, professional services, as well as for judgments in condemnation of prop-

erty, construction of streets and sewers and the like. Does this look like a judicial regard for the "principle of public law," called the separation of powers? It does not. However, it is the exercise of another legislative function by the courts: the appropriation power of the legislature.

The extent of the use of mandamus executions may be indicated by the amounts for which they have been issued during recent years:

"MANDAMUS EXECUTIONS CERTIFIED BY LAW DEPARTMENT 1906–1915 YEAR BY YEAR

1906	$ 1	206	783	55
1907	3	107	008	64
1908	2	004	948	14
1909	2	537	087	80
1910	1	004	448	11
1911		864	935	00
1912		789	760	00
1913	1	468	925	90
1914		800	593	99
1915		837	291	88
Total	14	621	783	01

("Study of Mandamus Executions, Bureau of Municipal Research of Philadelphia, May 1916.")

Some of the purposes for which these mandamuses have been issued that are particularly interesting from the budget standpoint are given on page 276.

Mr. Robert E. Tracy, formerly of the staff of the Philadelphia Bureau of Municipal Research, who made the study (as yet unpublished) from which the facts quoted are gleaned, very aptly remarks:

"One finds, in examining mandamuses paid in various years, considerable money expended for personal service, especially in the courts themselves. There can be little criticism of money ordered out of the public treasury as the

EXHIBIT A

	Total 1906–1915	1915	1914	1913	1912	1911
Professional services.....	$64,130.46	$5,001.44	$10,368.90	$5,898.80	$4,583.41	$5,415.55
Services as county auditor..	2,056.25		254.50		252.00	272.00
Fees; steno., referees, expert witnesses.....	658,058.75	66,928.50	58,385.34	78,014.26	75,098.02	57,286.25
Special commissioners in lunacy	25,686.70	869.69	386.94	2,228.56	2,333.80	2,400.75
Printing jury lists, binding assessors, lists, etc....	8,372.99	353.24	121.75	332.50	332.50	1,613.00
Courts						
Supplies for	30,356.96					3,257.35
Salaries ..... court officials	34,070.57	9,104.69	21,436.18	406.00	979.99	809.65

("Study of Mandamus Executions, Bureau of Municipal Research of Philadelphia, May, 1916.")

result of a judgment secured against the city in a suit or in consequence of a real writ of mandamus, but where courts themselves pay employees, clerks, probation officers, tipstaves, janitors, witness fees, etc., and buy supplies in addition, by such *colorable use of judicial process,* there arises the question why councils appropriate any money at all to the use of the courts. Why not finance the courts entirely by mandamus? Councils always know that they must satisfy the wishes of the courts regardless, appropriating mainly through the City Commissioners, the Prothonotary, and Clerk of Quarter Sessions. The judges themselves are paid by the commonwealth."

One can hardly conceive of federal or state courts assuming such power, but the facts are given as to what has actually occurred in one of our great municipalities. The process by which it was done may be noted briefly for that, too, is instructive:

"Mandamus executions are based largely on section 6 of the act of April 15, 1834, P. L. 537, providing for the execution of judgments against a county and, in Monoghan v. City of Philadelphia, 28 Pa. 207, this section was held to apply as well to a city like Philadelphia which is coterminous with a county. Although the Bullitt Bill, commonly known as the city charter, of June 1, 1885, Art. VIII, Sec 3, par. 4, provided for taking care of judgments against the treasury, without funds to pay them, out of the next tax levy, this paragraph was held to be unconstitutional in Betz v. Philadelphia, 4 Pa. C. C. 481 (1886), on the ground that judgment creditors in Philadelphia county would be at a disadvantage as compared with those in other counties and consequently the law of 1834 still applies."

The power is thus based on (1) the declaration by the courts of one act to be unconstitutional, and (2) judicial legislation to extend the provisions of an act

limited to counties and county business to city and city business because a city happened to be coterminous with a county.

The extraordinary and exceptional character of this Philadelphia situation is, of course, not decisive. It ought not to be forgotten, however, on that account, but kept in mind as a possibility — however remote — and in any case, as a rather striking way of financing the courts. Presumably the Councils of the city of Philadelphia are acquiescent. To what extent this is due to the judicial buttressing of the power by the courts themselves is a question difficult of determination and upon which no reliable information is available. At any rate, there is no conflict of courts and legislature. The legislature does not appropriate the money, and the courts continue to mandamus, though such procedure is contrary to sound public policy.

LEGISLATIVE CONTROL OF EXISTENCE OF COURTS

The problem of control over the courts' existence through control of its budget, that is, through refusal to appropriate funds, is in the national government, a problem of the ability of the Congress to refuse to vote the salary of the judges. It will be shown why this is so.

Congress creates an "inferior court." It wishes to abolish it. Taking away its jurisdiction may be a legal way of abolishing the court, but it does not in our legal theory abolish the judges. The result of such action is to leave federal judges roaming about free and disembodied, with life tenure and an annual salary

that cannot be reduced. In other words, the problem of legislative control through the budget remains. Let us see how the thing actually works out.

THE ABOLITION OF THE COMMERCE COURT

The Commerce Court was created in 1910 though it did not get under way until April, 1911. It was given jurisdiction over interstate commerce cases. General dissatisfaction followed its decisions, and numerous reversals by the Supreme Court sealed its fate. But what could Congress do? Could it abolish it? It did by tying on a rider to an appropriation bill. Representative Fitzgerald puts the case well:

> "We abolished the Court of Commerce in the Appropriation Bill. I was somewhat instrumental in doing that. I was in favor of it. I thought it should be abolished. There was a great difference of opinion. The President was very strongly in favor of retaining it, and yet there was a two-thirds vote of the two Houses in favor of abolishing that court. Of course, if a bill could do it and come before the Congress, it could have passed over the President's veto. But the only way to accomplish it was to incorporate it in the appropriation bill. Whether it is a desirable thing to do or not, apart from that, under the Anglo-Saxon theory of government, the representatives of the people should be in a position to compel an executive by the coercion exercised by the refusal to grant necessary supplies to conduct the government, to acquiesce in legislation that two-thirds of the two Houses would say is particularly desirable." ("Budget Systems," p. 315.)

The abolition of the Commerce Court is a clear case of the power of Congress over the existence of a court. The Congress would not appropriate money for the next year, made up deficiencies for the then current

year, and provided specifically for the abolition of the court. The Congress did not abolish the judges, however. It provided:

"Nothing herein contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment under the terms of said act; but such judges shall continue to act under assignment, as in the said act provided, as judges of the district courts and circuit courts of appeal; and in the event of and on the death, resignation, or removal from office of any of such judges, his office is hereby abolished and no successor to him shall be appointed." (Statutes 1913, Sess. I, Ch. 32.)

But this does not mean that in the Congress there was no sentiment or belief that Congress had no power over the judges, too. The Senate amendment provided:

"So much of the act of 1910 creating the Commerce Court and so much of section 9 of the general judiciary act of 1911 with reference to the Commerce Court which provides for five additional Circuit court judgeships are hereby repealed, together with so much of said acts as authorized the President to appoint five additional Circuit judges, and the number of Circuit judges is hereby reduced to twenty-nine." (Chicago *Daily Tribune,* June 13, 1912.)

And the Senate vote on this amendment was 29 to 22. The amendment was included in the bill as it went to conference, but in the Conference Committee the conferees accepted the House amendment on the judgeships (quoted above) and the Senate amendment on the disposition of the cases before the Commerce Court. And consequently the Commerce Courts

judges were assigned to positions in the district courts and circuit courts of appeal, and because of this compromise on the measure the question of the power of the Congress over the judges was not determined.

But suppose such a provision had been included in the law as it passed as an explanation of Congressional failure to appropriate. What would then be the procedure?

WHAT HAPPENED IN 1802

The situation suggested in the last paragraph has occurred just once in our history, in 1802. The Judiciary Act of 1801, which provided for a "more convenient organization of the courts," created the circuit court judgeships. In accordance with law, judges were duly appointed by Adams among his last official acts. In 1802 the Congress, with Jefferson's approval, repealed the act — and the judges.

The procedure that was then followed will surprise those familiar with the present position of the courts. The judges memorialized Congress for a remedy for the infringement of rights secured to them by the Constitution, and the language of the memorial is no less striking than the presentation of the memorial. Because of its importance and because of its inaccessibility, it may be well to set down here the language of the memorial in full:

"By an act of Congress passed on the thirteenth day of February, in the year of our Lord one thousand and eight hundred and one, entitled 'An act to provide for the more convenient organization of the courts of the United States,'

certain judicial offices were created and courts established, called circuit courts of the United States.

"In virtue of appointments made under the Constitution of the United States, the undersigned became vested with the offices so created, and received commissions authorizing them to hold the same, with the emoluments thereunto appertaining, during their good behavior.

"During the last session an act of Congress passed by which the above mentioned law was declared to be repealed; since which no law has been made for assigning to your memorialists the execution of any judicial functions, nor has any provision been made for the payment of their stipulated compensation.

"Under these circumstances, and finding it expressly declared in the Constitution of the United States, that 'The judges both of the supreme and inferior courts shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office,' the undersigned, after the most deliberate consideration, are compelled to represent it as their opinion that the rights secured to them by the Constitution, as members of the Judicial Department, have been impaired.

"With these sincere convictions and influenced by a sense of public duty, they most respectfully request of Congress to review the existing laws with respect to the offices in question, and to define the duties to be performed by the undersigned, by such provisions as shall be consistent with the Constitution and the convenient administration of justice.

"The right of the undersigned to their compensations, they sincerely believe to be secured by the Constitution, notwithstanding any modification of the judicial department, which in the opinion of Congress, public convenience may recommend. This right, however, involving a personal interest, will be cheerfully submitted to judicial examination and decision in *such manner as the wisdom and impartiality of Congress may prescribe.*

"That judges should not be deprived of their offices or

compensations without misbehavior appears to the undersigned to be among the *first and best established principles in the American Constitution;* and in the various reforms they have undergone, it has been preserved and guarded with increased solicitude.

"On this basis the Constitution of the United States has laid the foundation of the Judicial Department and expressed its meaning in terms equally plain and peremptory.

"This being the deliberate and solemn opinion of the undersigned, the duty of their stations require that they should declare it to the legislative body. They regret the necessity which compels them to make the representation, and they confide that it will be attributed to a conviction that they ought not voluntarily surrender rights and authorities entrusted to their protection, not to their personal advantage, but for the benefit of the community." (Annals of Cong. of the 2d Sess., Jan. 27, 1803, pp. 30–31.)

This memorial was presented to the Senate January 27, 1803. It was referred to a committee of three, including Senator Ross who presented it. The Senate Committee reported that the question involved the constitution of the court, was therefore not cognizable by the Senate and reported the following resolution:

"Resolved, That the President of the United States be requested to cause an information, in the nature of a quo warranto, to be filed by the Attorney General against Richard Bassett, one of the said petitioners for the purpose of deciding judicially on their claims." (Ibid, pp. 51–52.)

The resolution was defeated by a vote of 15 to 13.

The petition had also been presented to the House and was referred to a committee. The Committee presented a resolution stating that the petition ought not to be granted and that the petitioners be allowed to

withdraw it. The Committee resolution was passed by a vote of 61 to 37. The petition was withdrawn.

In this connection it must be recalled that the courts had not as yet assumed with certainty their power to declare acts of Congress unconstitutional. The decision in the Madison v. Marbury case was handed down in February, 1803, wherein the Supreme Court asserted its right to declare acts of Congress unconstitutional. And the historian, Henry Adams, says that the suspension of the term of the Supreme Court for a year was to prevent any interference with the new arrangement.

The incident of 1802 is now perhaps only of historical interest, though it was used by the United States Senate as a precedent for its action in amending the general appropriation bill abolishing the Commerce Court judgeships. The intrenched position of the courts now is in striking contrast to the evidently precarious position of the courts in 1802. The prospect of any judge submitting in 1917 a memorial similar to the one of 1802 is unthinkable.

THE NEED FOR A SUPPORTING PUBLIC OPINION

It is not inconceivable, however, that a national or a state legislature might take action similar to that of 1802 or of the United States Senate in 1912. A flagrant use of the power to declare laws unconstitutional, as for example when the New York State Court of Appeals declared in the Ives case that the workmen's compensation law of that state was unconstitutional, or a series of such acts might, through the momentum of public opinion, force a legislature into such action.

But it ought to be made unmistakably clear, however, that no legislature would take such action unless it was supported by an overwhelming public sentiment. This was notably true in the case of the Commerce Court. Public sentiment was decidedly against the Court. The Court died with hardly a mourner — and the public gave only a sigh of relief. And yet on the other hand it is probably just as true that any attempt by a legislature to tamper with the courts for merely partisan ends or for other petty ends would arouse a public protest that would have to be heeded. Practically, therefore, Congress can exercise such power only when it is backed up by a very definite public opinion — and this despite the fact that the action from a strictly legal point of view may be unconstitutional.

FAILURE TO APPROPRIATE SALARLES OF JUDGES

Suppose Congress should at some time pass with reference to the judges of any federal court, including the Supreme Court, a law embodying the Senate amendment abolishing the Commerce Court judgeships. In this particular there is no difference between judges of the Supreme Court and judges of the inferior courts: all have the same protection, practical life tenure and a salary that cannot be diminished during their terms of office.

What can be done in that situation? The question was put to Ex-President Taft who vetoed the first effort to abolish the Commerce Court. He says in a private letter:

"The judges of the Commerce Court were Circuit Judges,

and so defined in the Act, with power and jurisdiction to sit in the Circuit Courts and in the Commerce Court. Congress could not, therefore, remove them by legislative act. They were Judges appointed for life by virtue of a constitutional provision, and Congress could not diminish their salaries. This gave them the right to go into the Court of Claims and sue under the jurisdiction of the Court of Claims to recover judgment against the United States for their salaries, which would accrue to them as judges under the law, and which Congress could not diminish. The statute giving them jurisdiction in the Court of Commerce was not repealed by failing to appropriate their salaries. Their duties and powers under the statute and the constitution remain unaffected." (Personal letter from President Taft, Aug. 25, 1915.)

HYPOTHETICAL, PERHAPS MYTHICAL

The problem in Mr. Taft's "solution" of the case is the collection of the judgment of the Court of Claims. It may safely be assumed that the judges would take the Taftian view. The judgment (or perhaps a mandamus) is presented to the Treasurer of the United States. No money has been appropriated by Congress for the purpose. The Treasurer refuses on the constitutional ground that "no money shall be drawn from the Treasury but in consequence of appropriation made by law." (Section 9, U. S. Constitution.) Nor is the mandamus or judgment any stronger if it is sustained by the judicial reasoning of some of the state courts: that where the constitution provides definitely for a salary, there is no need for a legislative appropriation. (4 Md. 189; 4 Neb. 216; 9 Mont. 370; 10 Mont. 497.) But against this is presented Senator Williams' statement of the situation:

"In no event can money in the Treasury become 'income

for public use'; that is, be available for the Executive for use or become available for 'the payment of national expenses,' except by force of appropriation. These phrases are right, and money not made available by appropriation 'for public use' or 'for the payment of national expenses' (including the courts) is not Government revenue. It is simply money lying inert in the Treasury. It belongs to the people, of course, but it can not be constitutionally used by 'the Government.'" ("The Supply Bills," by John S. Williams, 62d cong., 2d Sess., July, 1912.)

The Supreme Court of the United States, in a leading case as far back as 1850, has taken a position contrary to the opinion of the state courts quoted above. In a decision in that year it said:

"No officer of the government can pay a debt due by the United States without an appropriation of Congress, and without an appropriation a claim cannot be paid by the Treasury, whether the claim is by verdict or judgment." Reeside v. Walker (1850), 11 Hav. 272, 291, 13 L. Ed. 693. (From Annotations.)

Nor has the subsequent creation of the Court of Claims affected the matter. The judgments of the Court of Claims are reported to the Congress for such action as it sees fit. Claims before Congress and executive departments are referred to the Court of Claims for findings and opinions. So all the judgments of the Court of Claims are without practical effect until appropriations are made by Congress. And consequently the situation remains unaffected by judgments of the Court of Claims.

The situation created by a refusal of Congress to appropriate salaries for federal judges results prac-

tically in a conflict of two constitutional provisions: on the one hand, the provision

> "No money shall be drawn from the Treasury, but in consequence of appropriations made by law." (U. S. Const., Art. I, sec. 7.)

and on the other hand, the provision

> "The Judges, both of the supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." (U. S. Const., Art. III, sec. 1.)

The legal solution would seem to be with the courts, the practical solution with Congress.

SUMMARY

Estimates for financing the courts are submitted by the judiciary to the executive, who transmits them without revision to the legislature along with the executive proposals. For the same reasons that members of the executive departments are given the opportunity to explain and defend the executive's proposals, during the legislative consideration of the budget, so similarly, a member of the judiciary will have the privilege of the floor without the right to vote to explain and defend the estimates for the courts. Ordinarily the estimates of the judiciary present merely routine matters and no question arises. But, if, as in the case of the Commerce Court, or as in the case of the circuit judges in 1802, Congress wishes to abolish courts and judges, serious constitutional questions arise, and the extent of the

legislative "control of the purse strings," so far as the courts are concerned, is problematic — perhaps slight. At any rate, whatever power Congress may exercise in the way of control or abolition would always need the support of a strong insistent public opinion.

CONCLUSION

THE history of public finance reveals at least one certain fact: *the ever-increasing amount of public expenditure.*[1]

It is unfortunate, therefore, that much theoretical discussion of the budget and practically all political effort is directed to changing this adamantine fact of the history of public finance. Strenuous and persistent efforts are being made to reduce, in all political units, the amount of public expenditure. Public men elected on political platforms pledged to reduce the amount of public expenditure have come and have gone, but the tendency continues unabated. The whole cry of economy so far as it means merely less public expenditure is futile. Parsimony stalks about in the habiliments of true economy.

The fact of the ever-increasing amount of public expenditure may be viewed in this light: that people are increasingly paying from their social pocketbooks for services that they formerly paid for from their individual pocketbooks. The attempt in itself to reduce the amount of public expenditure may be regarded, therefore, as an effort to have people do things

[1] One may increase taxes in proportion to the liberty of the subjects; and one is forced to moderate them *pari passu* with augmentation of servitude. This always has been the case and always will be. It is a law of nature which never varies.—Montesquieu.

individually rather than collectively, and to pay for these things personally rather than socially. The problem is, therefore, *a* fundamental social problem, if not *the* fundamental social problem.

This book frankly recognizes and accepts the fact of the ever-increasing amount of public expenditure. It concerns itself, however, with outlining a budget procedure that will make possible a hundred cents in service for each dollar of public funds expended, whatever the amount expended. It is clearly recognized, on the other hand, that this result is dependent upon other facts besides a good budget procedure, e. g., trained public servants. This explains the emphasis throughout the book on the administrative side of government.

Our discussion of the budget was directed, not to a reduction of the amount of public expenditure, but to the wise determination of the amount of public funds to be expended. This principle was laid down as a test:

Social energy as expressed in public funds must secure in terms of social welfare results greater than the same expenditure privately made.

The determination of the amount of public expenditure is not a financial problem at all but a political and social one. It finds its explanation not in terms of money but in terms of social conditions and of organized social effort to improve these conditions. Its most obvious phase on the political side is the expanding functions of government. As thus expressed, there is brought more sharply into relief the important political problem which the American democracy has

not yet solved: the budget problem. And until we change our point of view, we are not going to solve it at all.

As a nation, we must see that the budget is not merely a problem of finance, it is not merely a problem of arithmetic, it is not merely a problem of accounting, though it has important financial and accounting aspects. We must see that the budget problem is primarily a politico-social problem going to the very essence of social well-being.

A budget system is proposed in keeping with the representative character of our democracy. A practical budget procedure is outlined within the present limits of our government and within its present character. The changes required by the proposed budget procedure may be accomplished almost entirely by administrative changes, though some legislative action will be required. There is no need for constitutional amendments. *The so-called "executive budget" program proposes a shifting of the center of gravity of our government.* Its tendency is toward autocratic executive power. It would achieve this change in government as a by-product to the budget scheme. So far as the executive budget plan aims to secure or as it implies parliamentary government, the American people will want to decide that question as such, and not camouflaged under the name of "executive budget."

The budget procedure outlined in this book aims at a fuller recognition of the democratic features of our government, particularly of the legislature. It assigns to the legislature the duties in budget-making

which our public law declares belong to the legislature and not to the executive, it subordinates the administration to the legitimate control of the legislature but it frees the administration from improper control and permits it to develop the positive and constructive side of public service.

Briefly, then, the social implications of the budget must be paramount. The accounting and financial aspects of the budget must be recognized and utilized in conformity with the social purposes of the budget, but must be kept subordinate. The budget is the fundamental political problem and the procedure for budget-making must reënforce the democratic features of our government.

This conception can be carried into effect under present conditions without any serious changes in our political system by a budget procedure based on the following principle:

That the function of the administration, including the executive, in budget-making is preliminary, preparatory, advisory, and the function of the legislature is determining and conclusive.

The budget procedure outlined in this book is in accord with this principle and is based on the social conception of the budget. This procedure may be briefly outlined as follows:

The whole governmental administrative machinery shall, in the first instance, be utilized in the preparation of the budget-proposals. Each subdivision of each of the departments shall organize its experience in terms of budget proposals for submission to the departmental heads. This is true in all governmental agencies.

The department heads review these bureau estimates in the light both of his experience and of his judgment and passes the result along.

In the executive departments these estimates go to the executive; in the judicial, they go to the highest court or to the Chief Justice; in the legislature, they go usually to the presiding officers of the legislative bodies. It is pointed out that the estimates for what are properly called administrative commissions, are not properly reviewable by the Executive, but that the recommendation by the commissioners should go to the legislature without review. The principal reason for this is that these administrative commissions because of their judicial functions should be treated as courts are, and because their functions are quasi-legislative, their natural relationship is with the legislature rather than with the executive.

The departmental estimates are reviewed, as noted, by the highest political officer of the department. He must express the sense of proportion, correct any bureaucratic tendency of the administration, supplement the narrowness of administrative experience by the public's point of view, and the social point of view, and determine what expansion of the work or organization of the public agency shall be recommended to the legislature.

For convenience, the estimate of the courts, the legislature and administrative commission are sent to the Executive to be transmitted with the estimates for executive departments. It would do no harm for the Executive to make memorandum comments and rec-

ommendations regarding these estimates, but the estimates themselves must go before the legislature as recommended by the highest officers of these divisions of government.

The budget proposals are presented to the legislature, and no artificial restrictions are placed upon legislative action. The legislature may change, accept or reject the proposals. The legislature has the same freedom of action with reference to the budget proposals as the directors of a business corporation have with reference to the manager's proposals. If the "business analogy" has any application in the budget procedure, it is in a procedure outlined in this book rather than in the so-called executive budget.

While the budget proposals are presented in great detail, the legislative bill proposes action only upon certain totals. It is not proposed that the legislature shackle the administration by making law all the supporting detail of the budget. The formulation of the budget proposals is, therefore, in certain lump sums and not in the minute detail of the "segregated budget." If there is no accounting control and no supervisory control, or officials are dishonest, or public funds are dissipated, there may be excuse for detailed legislative appropriation, but if administrators are to be given an opportunity to serve the public, they must not be mere automatons registering legislative edicts in all their minute detail.

Moreover, in order that the legislature may really make the budget acts an expression of public policy, they must formulate them in terms of governmental

function and not in terms of governmental structure. *Funds must be voted upon primarily for education, not for the Bureau of Education.*

No phase of budget discussion is more generally misunderstood than the subject of "continuing appropriations." Continuing appropriations are appropriations voted to the comparatively *permanent* services of government, which continue in effect until changed by the same process by which they were originally passed. It places budget enactments for the comparatively permanent services of government under the same legal basis as other law. The continuing appropriations prevent, to a considerable degree, legislative manipulation, reduce the need for administrative "dickering" with the legislature, permit planning for over a series of years, and withal, make possible effective intelligent legislative review at the regular sessions of the legislature.

Legislative organization must be made to promote adequate pertinent legislative consideration of the budget bills. The parceling out to various committees of various aspects of the appropriations for the same field of governmental work results in ill-balanced appropriations. No committee nor member knows what is spent, say, for public health, or even for a particular department, and in many state legislatures it is difficult to determine this even after prolonged post-mortem. The remedy proposed is in some form of single appropriation committee. This committee ought also to consider the revenue aspects of the budget. But for the present, great good would be accomplished at Washington by centralizing consideration of expendi-

tures, as consideration of revenues is now centralized. In some states, unfortunately, the consideration of both revenue and expenditure needs to be organized and centralized.

That is the first step, but some states may be ready to omit the standing committee procedure entirely and adopt instead a thoroughgoing committee of the whole procedure. In any case, the committee of the whole procedure will always be utilized in any effective budget-making procedure. In the committee of the whole, the rules are not a barrier to discussion, but ordinarily they are and rules reform both of committee procedure and of floor discussion is important.

To promote public, adequate and pertinent discussion of budget proposals, it is recommended (1) that there shall be no limit placed upon the length of the legislative session, and the practice of sixty-day session or any other definite number of days session is condemned as promoting legislative manipulation by the sinister influences in a legislature and the stifling of discussion. (2) That the public shall be invited to participate in the legislative consideration of the budget in committee of the whole. This is greatly to be preferred to public hearings before the Governor or to committee hearings because here the public has its best chance, and such discussions have wide educational and civic results. (3) That the privilege of the floor be extended to proper administrative officers so that the budget proposals may be adequately presented to the legislature and adequately defended by the makers of the proposals.

Perhaps the most important thing, is to promote the

right kind of criticism of budget proposal within the legislature itself. Two proposals are aimed to do this. The first is to give the minority control of a committee of criticism by whatever name called and to make it possible to collect reliable information without relying on the routine administrative machinery. The other is to give the minority the right to summon administrative officers before the bar of the legislative house and require answer to specific questions, particularly on subjects and aspects of subjects upon which the administration did not voluntarily supply full information with the budget proposals.

The peculiar problem of the legislature which we refer to as "pork" may be solved by a combination of the following remedies: by the Executive veto, by local contributions to national projects in the locality, by substituting party for individual responsibility for public works bills, and by an administrative commission.

The general procedure outlined above is applicable to the courts, and ordinarily presents no difficulty, but in a time of conflict between courts and legislature serious problems would arise for supremacy. It would seem, in spite of our legal theory of judicial supremacy, that a determined legislature could actually exercise control, through control of the purse strings.

The tests of a budget procedure in a complex, progressive industrial society are not financial but social. Reduction of the amount of public expenditure as such, was expressly rejected, as a factor in determining the budget procedure above outlined. The determining factors in the budget procedure recommended in

this book are two: the character of the society which the government to be financed is to serve, and the character of the government itself. A society such as ours cannot be restricted in its social programs by artificial absolute limitations upon the amount of money to be spent by government, nor by a limitation on the pressing and expanding social needs which government will minister to.

A representative democracy cannot afford, in spite of what may seem to be great immediate advantages, to turn over its destinies completely or largely to an executive, even though elected by the democracy, nor can it afford to stifle the social aspirations of the members of the society and the expression of social need and social demand and the request for public funds for social improvement thus expressed. Consequently, the whole budget procedure must be peculiarly fluid and it must reflect through the representative agency the multifarious articulate, and even inarticulate social demands of the society to be served by the government.

Such are the tests of a budget procedure! How completely the procedure outlined in this book meets these tests is the privilege of the reader to determine.

APPENDIX I

THE PROPOSED NEW YORK AND THE MARYLAND BUDGET AMENDMENTS

A great deal of discussion of the last two years has centered around the budget sections of the defeated constitution of New York State and the Maryland amendment which was ratified by the people of Maryland. Both these documents are frequently referred to in the text and for convenience both documents are printed below.

Budget Sections of the Proposed New York State Constitution

"Article V, Section 1. On or before the fifteenth day of November in the year one thousand nine hundred and sixteen and in each year thereafter the head of each department of the state government except the legislature and judiciary, shall submit to the governor itemized estimates of appropriations to meet the financial needs of such department, including a statement in detail of all moneys for which any general or special appropriation is desired at the ensuing session of the legislature, classified according to relative importance and in such form and with such explanation as the governor may require.

"The governor, after public hearing thereon, at which he may require the attendance of heads of departments and their subordinates, shall revise such estimates according to his judgment.

"Itemized estimates of the financial needs of the legislature certified by the presiding officer of each house and of the judiciary certified by the comptroller shall be transmitted to the governor before the fifteenth day of January next suc-

ceeding for inclusion in the budget without revision but with such recommendation as he may think proper.

"On or before the first day of February next succeeding he shall submit to the legislature a budget containing a complete plan of proposed expenditures and estimated revenues. It shall contain all the estimates so revised or certified and shall be accompanied by a bill or bills for all proposed appropriations and reappropriations, clearly itemized; it shall show the estimated revenues for the ensuing fiscal year and the estimated surplus of deficit of revenues at the end of the current fiscal year together with the measures of taxation, if any, which the governor may propose for the increase of the revenues. It shall be accompanied by a statement of the current assets, liabilities, reserves and surplus or deficit of the state; statements of the debts and funds of the state; an estimate of its financial condition as of the beginning and end of the ensuing fiscal year; and a statement of revenues and expenditures for the two fiscal years next preceding said year, in form suitable for comparison. The governor may, before final action by the legislature thereon, amend or supplement the budget.

"A copy of the budget and of any amendments or additions thereto shall be forthwith transmitted by the governor to the comptroller.

"The governor and the heads of such departments shall have the right, and it shall be their duty when requested by either house of the legislature, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearance and inquiries shall be provided by law. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein; but this provision shall not apply to items for the legislature or judiciary. Such a bill when passed by both houses shall be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary shall be subject to his approval as provided in section nine of article four.

"Neither house shall consider further appropriations until the appropriation bills proposed by the governor shall have been finally acted on by both houses; nor shall such further appropriations be then made except by separate bills each for a single work or object, which bills shall be subject to the governor's approval as provided in section nine of article four. Nothing herein contained shall be construed to prevent the governor from recommending that one or more of his proposed bills be passed in advance of the others to supply the immediate needs of government."

While this article contains the principal budget provisions, there are some other provisions of the constitution that ought, particularly, to be considered in connection with them. These provisions are:

"Section 16. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage. No bill shall be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature. Immediately after the last reading of a bill the question upon its final passage shall be taken and the yeas and nays entered on the journal."

"Section 22. No money shall ever be paid out of the treasury of this state or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made not later than three months after the close of the fiscal year next succeeding that in which such appropriation was made; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum. Appropriations made by the legislature in the year one thousand nine hundred and sixteen shall be made

for a period ending the thirtieth day of June, one thousand nine hundred and seventeen, and thereafter the fiscal year of the state shall end on the thirtieth day of June of each year, unless otherwise provided by law."

To indicate the trend toward executive aggrandizement of this constitution and particularly over the legislature, it was proposed to drop the following section of the old constitution:

"Section 7 of Article III. The political year and legislative term shall begin on the first day of January; and the legislature shall, every year, assemble on the first Wednesday in January."

The Maryland Budget Amendment [1]

"Section 52 (of the Constitution)

Sec. 52. The General Assembly shall not appropriate any money out of the Treasury except in accordance with the following provisions:

Sub-Section A:

Every appropriation bill shall be either a Budget Bill, or a Supplementary Appropriation Bill, as hereinafter mentioned.

Sub-Section B:

First. Within twenty days after the convening of the General Assembly (except in the case of a newly elected Governor, and then within thirty days after his inauguration), unless such time shall be extended by the General Assembly for the session at which the Budget is to be submitted, the Governor shall submit to the General Assembly two budgets, one for each of the ensuing fiscal years. Each budget shall contain a complete plan of proposed expenditures and esti-

[1] The suggestions made in this book for the formal budget procedure can be effected without constitutional amendment, and it was particularly the aim of this book to make no changes in the constitutional basis of the government.

mated revenues for the particular fiscal year to which it relates; and shall show the estimated surplus or deficit of revenues at the end of such year. Accompanying each budget shall be a statement showing: (1) the revenues and expenditures for each of the two fiscal years next preceding; (2) the current assets, liabilities, reserves and surplus or deficit of the State; (3) the debts and funds of the State; (4) an estimate of the State's financial condition as of the beginning and end of each of the fiscal years covered by the two budgets above provided; (5) any explanation the Governor may desire to make as to the important features of any budget and any suggestion as to methods for the reduction or increase of the State's revenue.

Second. Each budget shall be divided into two parts, and the first part shall be designated " Governmental Appropriations " and shall embrace an itemized estimate of the appropriations: (1) for the General Assembly as certified to the Governor in the manner hereinafter provided; (2) for the Executive Department; (3) for the Judiciary Department, as provided by law, certified to the Governor by the Comptroller; (4) to pay and discharge the principal and interest of the debt of the State of Maryland in conformity with Section 34 of Article III of the Constitution, and all laws enacted in pursuance thereof; (5) for the salaries payable by the State under the Constitution and laws of the State; (6) for the establishment and maintenance throughout the State of a thorough and efficient system of public schools in conformity with Article VIII of the Constitution and with the laws of the State; (7) for such other purposes as are set forth in the Constitution of the State.

Third. The second part shall be designated " General Appropriations," and shall include all other estimates of appropriations.

The Governor shall deliver to the presiding officer of each house the budgets and a bill for all the proposed appropriations of the budgets clearly itemized and classified; and the presiding officer of each house shall promptly cause said bill to be introduced therein, and such bill shall be known as the

"Budget Bill." The Governor may, before final action thereon by the General Assembly, amend or supplement either of said budgets to correct an oversight or in case of an emergency, with the consent of the General Assembly by delivering such an amendment or supplement to the presiding officers of both houses; and such amendment or supplement shall thereby become a part of said budget bill as an addition to the items of said bill or as a modification of or a substitute for any item of said bill such amendment or supplement may affect.

The General Assembly shall not amend the budget bill so as to affect either the obligations of the State under Section 34 of Article III of the Constitution, or the provisions made by the laws of the State for the establishment and maintenance of a system of public schools, or the payment of any salaries required to be paid by the State of Maryland by the Constitution thereof; and the General Assembly may amend the bill by increasing or diminishing the items therein relating to the General Assembly, and by increasing the items therein relating to the judiciary, but except as hereinbefore specified, may not alter the said bill except to strike out or reduce items therein, provided, however, that the salary or compensation of any public officer shall not be decreased during his term of office; and such bill when and as passed by both houses shall be a law immediately without further action by the Governor.

Fourth. The Governor and such representatives of the executive departments, boards, officers and commissions of the State expending or supplying for State's money, as have been designated by the Governor for this purpose, shall have the right, and when requested by either house of the Legislature, it shall be their duty to appear and be heard with respect to any budget bill during the consideration thereof, and to answer inquiries relative thereto.

Sub-Section C: Supplementary Appropriation Bills:

Neither house shall consider other appropriations until the Budget Bill has been finally acted upon by both houses, and no such other appropriation shall be valid except in accord-

ance with the provisions following: (1) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called herein a Supplementary Appropriation Bill; (2) Each Supplementary Appropriation Bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as shall be directed in said Bill; (3) No Supplementary Appropriation Bill shall become a law unless it be passed in each house by a vote of a majority of the whole number of the members elected; and the yeas and nays recorded on its final passage; (4) Each Supplementary Appropriation Bill shall be presented to the Governor of the State as provided in Section 17 of Article II of the Constitution and thereafter all the provisions of said Section shall apply.

Nothing in this amendment shall be construed as preventing the Legislature from passing at any time in accordance with the provisions of Section 28 of Article III of the Constitution and subject to the Governor's power of approval as provided in Section 17 of Article II of the Constitution an appropriation bill to provide for the payment of any obligation of the State of Maryland within the protection of Section 10 of Article I of the Constitution of the United States.

Sub-Section D: General Provisions:

First. If the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the Governor may, and it shall be his duty to issue a proclamation extending the session for such further period as may, in his judgment, be necessary for the passage of such Bill; but no other matter than such Bill shall be considered during such extended session except a provision for the cost thereof.

Second. The Governor for the purpose of making up his budgets shall have the power, and it shall be his duty, to require from the proper State Officials, including herein all executive departments, all executive and administrative offices, bureaus, boards, commissions and agencies expending or supervising the expenditure of, and all institutions apply-

ing for State moneys and appropriations, such itemized estimates and other information, in such form and at such times as he shall direct. The estimates for the Legislative Department, certified by the presiding officer of each house, of the Judiciary, as provided by law, certified by the Comptroller, and for the public schools, as provided by law, shall be transmitted to the Governor, in such form and at such times as he shall direct, and shall be included in the budget without revision.

The Governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies, and of all institutions applying for State moneys. After such public hearings he may, in his discretion, revise all estimates except those for the legislative and judiciary departments, and for the public schools as provided by law.

Third. The Legislature may, from time to time, enact such laws, not inconsistent with this Section, as may be necessary and proper to carry out its provisions.

Fourth. In the event of any inconsistency between any of the provisions of this Section and any of the other provisions of the Constitution, the provisions of this Section shall prevail. But nothing herein shall in any manner affect the provisions of Section 34 of Article III of the Constitution or of any laws heretofore or hereafter passed in pursuance thereof, or be construed as preventing the Governor from calling extraordinary sessions of the Legislature as provided by Section 16 of Article II, or as preventing the Legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

If any item of any appropriation bill passed under the provisions of this Section shall be held invalid upon any ground, such invalidity shall not affect the legality of the Bill or of any other item of such Bill or Bills.

APPENDIX II

One of the remedies for the pork-barrel proposed in Chapter X is the administrative commission. The Congress of the United States has had before it various proposals embodying this remedy. One of the most recent and, though defective, one of the best for remedying the river and harbor pork-barrel is H. R. 6821, 64th Congress, First Session.

"A BILL

CREATING A NATIONAL WATERWAY COMMISSION"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission is hereby created and established, to be known as the National Waterway Commission, hereafter referred to as the commission, which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the

right of the remaining commissioners to exercise all the powers of the commission.

SEC. 2. That each commissioner shall receive an annual salary of $10,000, payable in the same manner as the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive an annual salary of $5,000, payable in like manner. The commission shall have the authority to employ and fix the compensation of civil engineers, clerks, and other employees, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated by Congress, and in making appointments for continuous service the commission, so far as practicable, shall select its employees from the classified service.

All property of the United States in the hands or under the control of Army engineers or other officials or of private individuals or public contractors, including dredges, steamboats, barges, yards, and other property used in the improvement of public waterways, shall be placed under the jurisdiction and authority of the commission.

SEC. 3. That the Secretary of War may, if practicable, detail such Army engineers as are requested by the commission to assist in organizing and establishing a comprehensive system of waterway improvement, providing that such details of engineers shall not be made to the detriment of their military duties.

SEC. 4. That the commission shall have the authority and it shall be its duty to make an investigation of all waterway projects now constructed in whole or in part by Federal aid. The commission shall prepare a complete and succinct statement, by years, of the amount heretofore appropriated for each project, the estimated amount required to complete such project, a report of the commerce now served and to be served, the character of such commerce given by separate items so far as can be furnished, the source of information, the interests to be served, the kind of water craft used, and such other information as may be useful in determining the public use and value of the project. The com-

mission shall also furnish Congress, at the earliest practicable date, information concerning all harbors and waterways now improved or being improved in whole or in part by Government aid, showing the amount of commerce, character of terminals or landings, ownership thereof, and, so far as practicable, ownership of regular lines of craft used thereon; and the commission shall also report its recommendations for the finishing of the projects now being constructed or modification of existing plans or abandonment of work on any project, together with findings upon which such recommendations are based.

The commission shall further ascertain and report what projects are now being improved for purposes other than navigation, and if for power development, a full statement of interests concerned, officers and stockholders, public use to be served, if any, private or public contribution toward expense of construction, and the commission's recommendations thereon. Said commission shall further ascertain and report what projects are now being carried on in whole or in part for land-reclamation purposes, the character of such project, amount of lands to be recovered, estimated value of such lands, ownership thereof, and contributions now being made by beneficiaries toward such expenditures, together with the commission's recommendations.

The commission shall make a full investigation into all work now being performed by the Mississippi River Commission, the amount of money heretofore expended on such river, character and permanency of work performed, and reclamation interests now being served if there be any, a full statement of contributions by public or private interests toward said work, together with a comprehensive and intelligible report of the probable cost of the present plans of levee construction or other river improvement now being undertaken, the percentage of project completed, and this commission's recommendation thereon. Such Mississippi River report shall be separate and distinct from reports on other projects now under improvement by the Federal Government.

All of such data and all other available information of a pertinent character affecting particular projects or entire waterway improvements now being conducted by the Federal Government shall be collected in convenient form and presented to Congress in installments at the earliest practicable date.

When the commission shall have reason to believe at any time that the proposed project is not for general use of the public or will not warrant further expenditures, or if contributions shall be required to be furnished before further appropriations are made or further expenditures authorized, such commission shall immediately report to Congress, with a preliminary recommendation thereon, and shall furnish a copy thereof to the United States Treasurer. That thereupon, when so recommended, the Treasurer shall withhold all funds theretofore appropriated not specifically obligated under existing contracts and shall refuse further payments until subsequent and specific action shall be had thereon by Congress.

SEC. 5. That prior to the presentation of any new waterway project appropriations the commission shall cause a careful survey of the proposed improvement, and if it shall appear such project is to serve a public use and is feasible, the commission shall thereupon collate data showing the estimated cost thereof, commerce to be served, water craft to be used, public terminals furnished, and contributions recommended to be made by public or private interests, together with such additional data as has heretofore been specifically required to be furnished on existing projects. The commission shall thereupon transmit to the Committee on Appropriations of the House of Representatives a full report concerning such new project or projects, its recommendations thereon, and, if requested so to do, all other and further information that may be required by the Committee on Appropriations.

Whenever the commission shall determine that any waterway project is primarily for power or land-reclamation purposes or to serve special interests, the commission may

recommend Government aid for such project, notwithstanding the special interests to be served, and shall prepare data showing the proportionate amount of Federal aid recommended, together with suitable restrictions as to audit and payment of funds from the Public Treasury. Such recommendation shall be presented as a proposed separate bill to the Committee on Appropriations of the House and shall not be embodied in any general waterway appropriation bill by such committee.

Whenever any new survey shall be proposed for any waterway project the commission, prior to such survey, may require data to be furnished showing the public use and prospective commerce to be served and such other information as may be desired, and a brief synopsis of such information shall be furnished to Congress by the commission to accompany any recommendations made for new surveys.

All existing waterways, new projects, and new surveys shall be classified, so far as practicable, prior to each regular session of Congress, together with estimates of appropriations required for maintenance and improvement for the ensuing two-year period, and a brief report as to each project considered shall be separately prepared and, with the commission's recommendation thereon, shall be placed in the hands of the Committee on Appropriations of the House at the beginning of each session.

Whenever the Appropriations Committee so requires, the commission shall furnish additional data concerning any project, and shall further aid the Committee on Appropriations when requested so to do in the preparation of the regular river and harbor bill which shall be prepared and presented by the Committee on Appropriations of the House.

The commission shall further compile and cause to be published at the earliest practicable date for the use of Congress an intelligible, concise statement of past waterway expenditures by the Government and of amounts needed to complete all continuing projects, and shall further give estimates of future obligations to be incurred by new projects recommended for construction. The commission shall give

preference in its recommendations to Congress of appropriations needed to complete the more important projects, and, so far as practicable, shall enter upon a program looking toward the early completion of such projects.

The commission shall make a thorough investigation of reasons for loss of river traffic and shall make recommendations for the reëstablishment of such traffic. It shall ascertain and determine the most available craft for river use, and, as soon as practicable, shall prepare plans and build experimental craft for such purpose.

Whenever reason therefor shall appear the commission may fix reasonable freight rates on all interstate waterborne traffic by common carrier and upon all such traffic on navigable waters wholly within the State, subject, however, to the jurisdiction now conferred by law on the Interstate Commerce Commission to fix maximum joint rates between and over rail and water lines.

The commission shall determine the reasonableness of wharfage or water terminal charges, whether such terminals are owned by private persons or municipalities, and all river and harbor improvements, including terminal facilities, shall be under the supervision and control of the commission.

Whenever the commission shall determine that unprofitable railway freight tariffs are maintained in any given case in order to prevent waterway competition, it shall be the duty of the commission to make a report thereon in duplicate to the Interstate Commerce Commission and to Congress, with recommendations that Congress give power, if need be, to the Interstate Commerce Commission for fixing minimum railway rates.

The commission shall at the earliest practicable date adopt an intelligent system of natural waterway improvement and shall perform such other and further duties as may present themselves from time to time.

Whenever it shall be desirable to secure sworn testimony from any witness or witnesses relating to any project or to navigation generally, or whenever the commission shall

have reason to believe that private interests are secretly or improperly seeking to influence the commission or to force the passage of any private or public waterway measure through Congress, the commission may cause a hearing or summary investigation to be held, and for that purpose may issue summons, subpœnas, or other writs in the same manner and under the same procedure as is more specifically set forth in the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto, which portions of such Act relating to procedure, so far as applicable, are made a part of this Act, and may bring before such commission all parties believed to be informed concerning the facts or interested in the passage of such measure. A complete record shall be preserved of the testimony taken at such hearing and a certified transcript thereof shall be transmitted immediately to the Committee on Appropriations.

SEC. 6. That all unexpended balances to the credit of any project not specifically obligated under existing contracts shall from the date of the passage of this Act be transferred by the Treasurer to the general fund, and all vouchers thereafter paid by the Treasurer shall be upon order of the National Waterway Commission.

SEC. 7. That the sum of $500,000, or so much thereof as may be necessary, be, and the same hereby is, appropriated, out of any money in the Treasury, to carry out the provisions of this Act.

APPENDIX III

For purposes of reference there is given here the terms of governors of the various states and certain facts about legislative sessions as indicated in the column headings.

Frequent reference to some of these facts is made throughout the book, and readers may wish to make comparisons with their own states. For that reason, too, the following table is given.

State	Term of Governor	Legislative Sessions	Limit of Sessions
Alabama	4 years	Quad.	50 days
Arizona	2 "	Bien.	60 "
Arkansas	2 "	Bien.	60 "
California	4 "	Bien.	90 "
Colorado	2 "	Bien.	No
Connecticut	2 "	Bien.	No
Delaware	4 "	Bien.	60 "
Florida	4 "	Bien.	60 "
Georgia	2 "	Ann.	50 "
Idaho	2 "	Bien.	60 "
Illinois	4 "	Bien.	No
Indiana	4 "	Bien.	61 "
Iowa	2 "	Bien.	No
Kansas	2 "	Bien.	50 "
Kentucky	4 "	Bien.	60 "
Louisiana	4 "	Bien.	60 "
Maine	2 "	Bien.	No
Maryland	4 "	Bien.	90 "
Massachusetts	1 "	Ann.	No
Michigan	2 "	Bien.	No [2]
Minnesota	2 "	Bien.	90 "
Mississippi	4 "	Bien.[1]	No
Missouri	4 "	Bien.	70 "
Montana	4 "	Bien.	60 "
Nebraska	2 "	Bien.	60 "
Nevada	4 "	Bien.	60 "

[1] Extra sessions 20 days with pay.

[2] Special sessions, limited to 30 days, are held alternately with regular sessions.

State	Term of Governor	Legislative Sessions	Limit of Sessions
New Hampshire .	2 years	Bien.	No
New Jersey	3 "	Ann.	No
New Mexico	2 "	Bien.	90 days
New York	2 "	Ann.	No
North Carolina ..	4 "	Bien.	60 "
North Dakota ..	2 "	Bien.	60 "
Ohio	2 "	Bien.	No
Oklahoma	4 "	Bien.	60 "
Oregon	4 "	Bien.	40 "
Pennsylvania ...	4 "	Bien.	No
Rhode Island ..	2 "	Ann.	No
S. Carolina	2 "	Ann.	No
S. Dakota	2 "	Bien.	60 "
Tennessee	2 "	Bien.	75 "
Texas	2 "	Bien.	60 "
Utah	4 "	Bien.	60 "
Vermont	2 "	Bien.	No
Virginia	4 "	Bien.	60 "
Washington	4 "	Bien.	60 "
West Virginia ...	4 "	Bien.	45 "
Wisconsin	2 "	Bien.	No
Wyoming	4 "	Bien.	40 "

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